

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF RICHLAND )

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4 JUDICIAL MERIT SELECTION COMMISSION

5 TRANSCRIPT OF PUBLIC HEARINGS

6 \* \* \* \* \*

7 BEFORE: REPRESENTATIVE ALAN D. CLEMMONS, CHAIRMAN

8 ERIN CRAWFORD, CHIEF COUNSEL

9 SENATOR LARRY A. MARTIN

10 REPRESENTATIVE BRUCE W. BANNISTER

11 MS. KRISTIAN BELL

12 MR. ROBERT M. WILCOX

13 SENATOR GERALD MALLOY

14 REPRESENTATIVE DAVID J. MACK, III

15 MICHAEL HITCHCOCK

16 SUSAN T. WALL

17 \* \* \* \* \*

18 DATE: November 17th, 2015

19 TIME: 9:45 A.M.

20 LOCATION: Blatt Building, Room 516

21 1101 Pendleton Street

22 Columbia, South Carolina 29201

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24 REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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21  
22  
23  
24  
25

INDEX

PAGE:

JEROME P. ASKINS, III..... 7  
Examination by Mr. Stimson..... 11  
Examination by Mr. Wilcox..... 20  
Examination by Senator Malloy..... 22  
Examination by Representative Mack..... 27  
Examination by Representative Clemmons..... 30  
Re-Examination by Senator Malloy..... 35  
JEFFREY P. BLOOM..... 38  
Examination by Ms. Wells..... 41  
Examination by Mr. Wilcox..... 52  
Examination by Senator Malloy..... 53  
Examination by Mr. Hitchcock..... 59  
Re-examination by Senator Malloy..... 63  
JOSEPH M. EPTING, JR..... 68  
Examination by Mr. Gentry..... 71  
Examination by Senator Malloy..... 78  
Examination by Mr. Wilcox..... 79  
Examination by Representative Bannister..... 80  
WILLIAM PATRICK FRICK..... 82  
Examination by Mr. Maldonado..... 86  
Examination by Senator Malloy..... 95  
Examination by Mr. Wilcox..... 99

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX (CONTINUED)

PAGE:

JOCELYN NEWMAN..... 102  
Examination by Ms. Dean..... 106  
Examination by Mr. Wilcox..... 111  
Examination by Ms. Wall..... 112  
Examination by Senator Malloy..... 113  
Examination by Ms. Bell..... 116  
GRADY L. PATTERSON, III..... 118  
Examination by Ms. Simpson..... 121  
Examination by Senator Malloy..... 133  
Examination by Mr. Wilcox..... 136  
Examination by Representative Clemmons..... 137  
ROBERT L. REIBOLD..... 141  
Examination by Mr. Pearce..... 146  
Examination by Mr. Wilcox..... 159  
Certificate of Reporter..... 169

\* \* \* \* \*

REQUESTED INFORMATION INDEX

(No Information Requested.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX

PAGE:

EXHIBIT NO. 1..... 8  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Jerome P. Askins, III dated  
July 17th, 2015

EXHIBIT NO. 2..... 12  
- Judicial Merit Selection Commission Sworn  
Statement for Jerome P. Askins, III dated  
July 17th, 2015

EXHIBIT NO. 3..... 39  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Jeffrey P. Bloom dated  
August 3rd, 2015

EXHIBIT NO. 4..... 41  
- Judicial Merit Selection Commission Sworn Statement  
for Jeffrey P. Bloom dated August 6th, 2015

EXHIBIT NO. 5..... 69  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Joseph M. Epting, Jr. dated  
August 17th, 2015

EXHIBIT NO. 6..... 70  
- Judicial Merit Selection Commission Sworn Statement  
for Joseph M. Epting, Jr. dated August 5th, 2015

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX (CONTINUED)

PAGE:

EXHIBIT NO. 7..... 83  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for William Patrick Frick dated  
August 5th, 2015

EXHIBIT NO. 8..... 86  
- Judicial Merit Selection Commission Sworn Statement  
for William Patrick Frick dated August 3rd, 2015

EXHIBIT NO. 11..... 104  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Jocelyn Newman dated  
August 17th, 2015

EXHIBIT NO. 12..... 105  
- Judicial Merit Selection Commission Sworn Statement  
of Jocelyn Newman dated August 17th, 2015

EXHIBIT NO. 13..... 119  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Grady L. Patterson, III dated  
August 17th, 2015

EXHIBIT NO. 14..... 121  
- Judicial Merit Selection Commission Sworn Statement  
of Grady L. Patterson, III dated August 17th, 2015

1  
2  
3  
4  
5  
6  
7  
8  
9  
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11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX (CONTINUED)

EXHIBIT NO. 15..... 143  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Robert L. Reibold dated  
August 4th, 2015  
EXHIBIT NO. 16..... 145  
- Judicial Merit Selection Commission Sworn Statement  
for Robert L. Reibold dated August 3rd, 2015

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Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- ... Indicates trailing off
- [ph] Denotes phonetically written
- [sic] Written as said

1                   WHEREUPON:

2                   JEROME P. ASKINS, III, being duly sworn and  
3 cautioned to speak the truth, the whole truth and nothing  
4 but the truth, testifies as follows:

5                   REPRESENTATIVE CLEMMONS: Do you have  
6 someone special here with you today --

7                   MR. ASKINS: Yes, sir.

8                   REPRESENTATIVE CLEMMONS: -- that you'd like  
9 to introduce?

10                  MR. ASKINS: Mr. Chairman, it's somebody  
11 very special; we've been married for 41 years. This is my  
12 wife Donna. And we met in Columbia when we were both in  
13 school. She was at Columbia College, and I was at USC,  
14 residing down the street a few blocks in the old  
15 Honeycombs, at the corner of Sumter and Russell at the  
16 time. We have two boys, both of whom are medical doctors.  
17 They were both smarter than their old man. And both are at  
18 Clemson, unlike their dad.

19                  REPRESENTATIVE CLEMMONS: Well,  
20 congratulations. It's good to have you with us today, Mr.  
21 Askins. Thank you for joining us. Mr. Askins have you had  
22 an opportunity to review your personal data questionnaire?

23                  MR. ASKINS: Yes, sir. I looked over it,  
24 just briefly.

25                  REPRESENTATIVE CLEMMONS: Is it correct?

1 MR. ASKINS: As far as I know, everything's  
2 correct. Yes, sir.

3 REPRESENTATIVE CLEMMONS: Is there any  
4 amendment or change that you'd like to make to that?

5 MR. ASKINS: No, sir. Not that I'm aware  
6 of.

7 REPRESENTATIVE CLEMMONS: Mr. Askins, would  
8 you have an objection if we were to add that personal data  
9 questionnaire to the transcript of your testimony today?

10 MR. ASKINS: No objection.

11 REPRESENTATIVE CLEMMONS: Are there any  
12 objections by members of the Commission?

13 (No response.)

14 REPRESENTATIVE CLEMMONS: Hearing none, so  
15 ordered.

16 (EXHIBIT NO. 1 - Judicial Merit Selection  
17 Commission Personal Data Questionnaire for Jerome  
18 P. Askins, III dated July 17th 2015)

19 REPRESENTATIVE CLEMMONS: The Judicial Merit  
20 Selection Commission has thoroughly investigated your  
21 qualifications for the bench, Mr. Askins. Our inquiry has  
22 focused on the nine evaluative criteria, and it's --  
23 there's been a ballot box survey, a thorough study of your  
24 application materials, verification of your compliance with  
25 state ethics laws, a search of newspaper articles in which

1 your name appears, a study of previous screenings, and a  
2 check for economic conflicts of interest.

3 We've received no affidavits filed in opposition  
4 to your -- to your election. No witnesses are present to  
5 testify. Do you have a brief opening statement you'd like  
6 to share with the Commission?

7 MR. ASKINS: Mr. Chairman, you know, it  
8 doesn't seem like that long since I was before this  
9 committee -- commission last year, and, yet, for some  
10 reason it seems like an eternity. I -- some of the  
11 commissioners may recall I ran for a circuit court seat  
12 last year, and was fortunate enough to be one of those  
13 nominees that went all the way to the election, and lost to  
14 a very nice young lady by a difference of two votes. And  
15 I'm back again.

16 I started practicing law with my father,  
17 who's a country lawyer in Hemmingway, after I finished law  
18 school. And we -- he had a very general practice. And I -  
19 - I've practiced in a lot of different areas, in a lot of  
20 different courts. We -- I've been in the municipal court,  
21 magistrates court, county court, family court, the circuit  
22 court in common pleas and in general sessions. I used to  
23 go to bankruptcy court a long time ago. I don't do that  
24 anymore. I've been in the Court of Appeals, the South  
25 Carolina Supreme Court, and the U.S. District Court. And

1 I've encountered all sorts of judges in that time, and over  
2 those years.

3 I practiced for 39 years. I've encountered  
4 all kinds of judges. Most were very good, some were  
5 exceptionally good. Some were not so good, and a few were  
6 very bad. And I decided, somewhere along the way, I would  
7 like to be a judge; I can do that. And I can do that job  
8 well. And of course opportunity and timing is everything,  
9 and those have to come together.

10 In my practice, I practiced in a lot of  
11 different areas. I've done a little bit of everything, and  
12 my clientele is very diverse. We -- we have people from  
13 all walks of life. And I think that's a factor that will  
14 benefit me as a circuit judge. I've had clients that are  
15 corporate clients that are traded on the big board on Wall  
16 Street, and I've had the little ma-and-pa operation down  
17 the street, that's struggling to pay the bills. I've had  
18 individual clients that have more money than I can imagine;  
19 they probably spend more in a week than most people make in  
20 a -- in a year. And, yet, I've got other clients that have  
21 difficulty coming up with fifty dollars, if they had to do  
22 it.

23 I've seen the world through a lot of  
24 different eyes. And I think that is a big advantage,  
25 having -- having experience in a broad field, in a number

1 of different areas with -- and dealing with a number of  
2 different clients, I think is a very beneficial thing for a  
3 circuit judge. So I'm back here. I want this job very  
4 much. I just turned 63. I'm in good health, as far as I  
5 know, and I didn't have any gray hair until I ran for  
6 circuit judge. I can still make it around the track a few  
7 times and I can still ride my unicycle. I have no plans to  
8 retire. And would like very much to finish my career on  
9 the bench serving the State of South Carolina.

10 REPRESENTATIVE CLEMMONS: You would have  
11 left an indelible mark on this Commission if you brought  
12 your unicycle with you. Thank you very much, Mr. Askins.  
13 As you know, Dustin Stimson is your assigned screening  
14 attorney. We would like to turn the time over to Mr.  
15 Stimson. And we'd ask that you respond to his questions.

16 MR. ASKINS: Yes, sir.

17 MR. STIMSON: Mr. Chairman and members of  
18 the Commission, I have a procedural matter to take care of  
19 with this candidate.

20 EXAMINATION BY MR. STIMSON:

21 **Q. Mr. Askins, you have before you the sworn**  
22 **statement you provided, with detailed answers to over 30**  
23 **questions regarding judicial conduct, statutory**  
24 **qualifications, office administration, and temperament.**  
25 **Are there any additional amendments you would like to make**

1 **at this time to your sworn statement?**

2 A. No, sir.

3 MR. STIMSON: At this time, Mr. Chairman,  
4 I'd like to ask that Mr. Askins sworn statement be entered  
5 as an exhibit into the hearing record.

6 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
7 Stimson. Is there any objection?

8 (No response.)

9 REPRESENTATIVE CLEMMONS: Hearing none, so  
10 ordered.

11 (EXHIBIT NO. 2 - Judicial Merit Selection  
12 Commission Sworn Statement of Jerome P. Askins,  
13 III dated July 17th 2015)

14 BY MR. STIMSON:

15 **Q. Mr. Askins, please state for the record the city**  
16 **and circuit court for which you reside.**

17 A. I reside in Johnsonville, which is in Florence  
18 County. That would be the 12th Circuit.

19 MR. STIMSON: One final procedural matter.  
20 I know for the record that based on the testimony contained  
21 in the candidate's PDQ, which has been included in the  
22 record with the candidate's consent, Mr. Askins meets the  
23 statutory requirements for this position regarding age,  
24 residence, and years of practice.

25 BY MR. STIMSON:

1           **Q. Mr. Askins, why do you now want to serve as a**  
2 **circuit court judge? And how do you feel your legal and**  
3 **professional experience thus far will assist you being an**  
4 **effective judge?**

5           A. Well, as I alluded earlier, I have practiced for  
6 a long time, I have a lot of experience in a lot of areas,  
7 and I have -- I feel that having a general practice and  
8 dealing with a lot of different type clients is a great  
9 advantage to a circuit judge. I have known some judges who  
10 have practiced and focused their practice in one area, and  
11 it was a disadvantage later on in their career on the  
12 bench. I think that my experience as an attorney, and in a  
13 general practice in a small town is a -- is a tremendous  
14 advantage.

15           As far as why I want to do it? This is something  
16 I've always aspired to do. As I said earlier, it's a --  
17 it's a position you don't just apply for any time. You  
18 have to have the opportunity, the timing has to be right.  
19 A lot of things have to fall into place. And I'm hoping  
20 that maybe the time is right this time.

21           **Q. Thank you. Mr. Askins, are there any areas,**  
22 **including subjective areas of law, that you would need to**  
23 **additionally prepare for in order to serve as a circuit**  
24 **court judge? And how would you handle that additional**  
25 **preparation?**

1           A.    Well, I'm sure that there will be a lot to learn.  
2 I don't think the learning curve would be very long. One  
3 thing that I think I would need to -- to beef-up on a  
4 little bit would be the sentencing in criminal court. I  
5 was an assistant public defender for most of three years,  
6 and I tried a lot of criminal cases. And at that time, you  
7 know, I could tell you what the -- I hesitate to use the  
8 term "going rate," but what the sentence was for a  
9 particular offense. And I have not done a lot of criminal  
10 recently.

11                 In Williamsburg County, where my office is  
12 located, most of the criminal work is done by the Public  
13 Defender's office and court-appointed attorneys. We have a  
14 lot of indigent criminal defendants. The criminals in  
15 Williamsburg County are generally not very successful,  
16 financially. And I haven't done a lot of criminal court  
17 work recently. And I am no longer on the appointment list,  
18 so I don't get appointed.

19                 I used to be on the appointed list for criminal  
20 cases. And I got transferred to the civil list, because  
21 they needed more attorneys in the family court to handle  
22 the DSS cases and the guardians. And so I was on that list  
23 for a while, and taken off criminal court. So that would  
24 be something that I would have to get back into. It  
25 wouldn't take very long at all to do that.

1           **Q. Thank you. Mr. Askins, although you addressed**  
2 **this in your sworn affidavit, could you please explain to**  
3 **the members of the Commission what you think is the**  
4 **appropriate demeanor for a judge.**

5           A. You know, one of the judges that I always thought  
6 was ideal as far as his courtroom demeanor, passed away  
7 recently, former Chief Justice David Harwell. He was on  
8 the circuit bench when I first started practicing. And to  
9 me, he was the epitome of a good judge. He -- he was very  
10 courteous and respectful to the people around him, the  
11 litigants, the attorneys, the jurors, the courtroom  
12 personnel. There was never any question who was running  
13 the courtroom. Judge Harwell was in charge. But he  
14 maintained order and decorum in a way that was not  
15 overbearing. He was never rude. He treated people with  
16 the kind of respect and courtesy that they would want to be  
17 treated with, and that they would remember. I just had the  
18 utmost respect for him. And I would -- I would aspire to  
19 be like that.

20           **Q. Thank you. Mr. Askins, what suggestions would**  
21 **you offer for improving the backlog of cases on the docket,**  
22 **be it general sessions or common pleas court?**

23           A. I think the ADR system is working well in the --  
24 in the civil court. A lot of cases are being resolved  
25 through mediation. I've always felt that, with good

1 attorneys and reasonable clients -- and that may be a  
2 difficult combination sometimes -- that probably 95 percent  
3 of the cases could be resolved without having a contested  
4 hearing. I think ADR is doing a good job for civil cases.

5 As far as the criminal docket, that's more  
6 difficult. And, you know, in my area, it seems that drugs  
7 -- illegal drugs are just a tremendous problem. And when I  
8 was doing a lot of criminal work, it seemed to me that  
9 probably 75 percent of the cases or more were drug-related  
10 or drugs; somebody was either selling drugs, somebody was  
11 stealing to get money to buy drugs, somebody shot somebody  
12 over drugs. And I don't know -- I don't see that slowing  
13 down. Unfortunately, I don't see a solution on the  
14 horizon. And I'm not sure how you handle the backlog on  
15 that. It's a difficult question. I may be better able to  
16 answer that at a later date.

17 **Q. Thank you. Mr. Askins, the Commission received**  
18 **77 ballot box surveys regarding you, with 5 additional**  
19 **comments. The ballot box surveys contained positive**  
20 **comments, including that you had a tremendous amount of**  
21 **experience and that you'd be a great asset to the bench.**  
22 **There was, however, one comment that did express some**  
23 **concern regarding your temperament on the bench. And could**  
24 **you address that for us, and can you address that concern**  
25 **here?**

1           A.    Well, the -- and the comment that you're  
2 referring to?

3           **Q.    Well, they said that while you were a good**  
4 **attorney, they were concerned that perhaps your demeanor**  
5 **would not be suited for -- for a judgeship.**

6           A.    Well, of course, I would take issue with that.  
7 But not knowing the source or the circumstances, I really  
8 couldn't respond to it in any detail.

9           **Q.    Thank you, sir. Now, Mr. Askins, I did notice in**  
10 **your SLED report that there was one lawsuit in which you**  
11 **were the plaintiff, stemming from 2006, which was a lis**  
12 **pendens action. Could you explain the nature -- could you**  
13 **explain the nature and disposition of that lawsuit, please,**  
14 **sir?**

15          A.    Well, I don't think we ever got to a lawsuit. I  
16 think they just filed a lis pendens. That had nothing to  
17 do with a claim. As an attorney, I bought a lot with  
18 another guy. He was a developer, he had planned to build a  
19 spec house on the lot. And we bought an adjoining lot,  
20 which we intended to resell. And at some point, he decided  
21 not to build the house, and he was going to convey his  
22 interest in the lot to me. And then he said that he would,  
23 and I had trouble getting in touch with him. And somebody  
24 told me he was about to move out of state, so I filed a lis  
25 pendens, just to protect myself with regard to the lot.

1 And then he came in and signed the deed, as he said he  
2 would. And that was the end of it.

3 Q. Thank you. I have just a few housekeeping issues  
4 to wrap you up with, sir.

5 A. Yes, sir.

6 Q. Have you sought or received a pledge of any  
7 legislator prior to this date?

8 A. No, sir.

9 Q. Have you sought or have you been offered a  
10 conditional pledge of support of any legislator pending the  
11 outcome of your screening?

12 A. No, sir.

13 Q. Have you asked any third parties to contact  
14 members of the General Assembly on your behalf?

15 A. No, sir.

16 Q. Are you aware of anyone attempting to intervene  
17 in any part of the process on your behalf?

18 A. No, sir.

19 Q. Have you contacted any members of the Commission?

20 A. No, sir.

21 Q. Do you understand that you are prohibited from  
22 seeking a pledge or commitment until 48 hours after the  
23 formal release of the Commission's report?

24 A. Yes, sir.

25 Q. Have you reviewed the Commission's guidelines on

1 **pledging?**

2 A. Yes, sir.

3 **Q. As a follow-up, are you aware of the penalties**  
4 **for violating the pledging rules; that is, it is a**  
5 **misdemeanor, and upon conviction the violator must be fined**  
6 **not more than a thousand dollars or imprisoned not more**  
7 **than 90 days?**

8 A. I couldn't have quoted the penalty to you, but I  
9 knew it was something I didn't want to have.

10 MR. STIMSON: I would note that the Pee Dee  
11 Citizens Committee felt Mr. Askins qualified in the  
12 evaluative criteria of constitutional qualifications,  
13 physical health, and mental stability. The Committee felt  
14 Mr. Askins well qualified in the evaluative criteria of  
15 ethical fitness, professional and academic ability,  
16 character, reputation, experience, and judicial  
17 temperament.

18 I would note for the record, that any  
19 concerns raised during the investigation regarding Mr.  
20 Askins, were incorporated into the questioning of him  
21 today.

22 Mr. Chairman, I have no further questions.

23 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
24 Stimson. Thank you, Mr. Askins. For the benefit of the  
25 commissioners who are not legislators, I'd just like to

1 share with you that Mr. Askins was in a contested race for  
2 a seat, just recently in the legislature, and he narrowly  
3 lost that -- very narrowly lost that election by -- three  
4 votes, was it?

5 MR. ASKINS: It was three votes. Two votes  
6 the other way would have made the difference.

7 REPRESENTATIVE CLEMMONS: Thank you for the  
8 distinction. And I'd just like to add that my observation  
9 was, Mr. Askins, that you -- you ran a very respectful  
10 campaign, and you distinguished yourself in that race.

11 MR. ASKINS: Thank you, sir.

12 REPRESENTATIVE CLEMMONS: Are there any  
13 questions by commissioners? Dean Wilcox.

14 EXAMINATION BY MR. WILCOX:

15 Q. Mr. Askins, first, thank you again for offering  
16 again. I appreciate your service to the state.

17 My question has to do with modern technology, a  
18 little bit. Discovery is obviously something that a  
19 circuit judge has to deal with on a regular basis. And  
20 given the amount of electronically-stored information  
21 that's now an issue -- and particularly civil litigation --  
22 can you tell the Commission a little bit of what you have -  
23 - either your level of experience with e-Discovery issues,  
24 or any education that you have undertaken to familiarize  
25 yourself with the particular issues regarding e-Discovery?

1           A.    You know, it's -- it's odd that you ask that.  At  
2 this time, I -- I'm not a techy.  And I had to be dragged  
3 into the 21st Century, kicking and screaming all the way.  
4 I attended a seminar in Manning last Thursday.  Chief  
5 Justice Toal was there with retired circuit judge Tommy  
6 Cooper, and they are implementing the pilot program for  
7 filing the documents by e-filing.  And the -- I think that  
8 starts in Clarendon County in December, and in Sumter and  
9 Lee County in January, and in Williamsburg County in  
10 February.  They already implemented that -- implemented  
11 that in the Federal Court, the U.S. District Court.

12                   And that's something that's coming.  We had a  
13 little overview on that.  There's a lot of tutorial  
14 information that I still need to review.  That's something  
15 that -- it's -- it's here.  The -- I think Judge Harwell  
16 made the comment one time, that we couldn't stay in the  
17 days of the pencil and yellow pad forever.  And Chief  
18 Justice Toal said that this is the next step in that  
19 process, that eventually it will be done statewide, and,  
20 you know, we will be -- everybody will be filing.

21                   There are exceptions, of course, for parties who  
22 are ex parte -- I'm sorry -- pro se parties; they would  
23 still have to be served in the traditional ways.  And all  
24 of that is sort of developing.  And -- and it's here.

25           **Q.    Thank you.**

1                   REPRESENTATIVE CLEMMONS: Thank you, Dean  
2 Wilcox. Any other questions?

3                   SENATOR MALLOY: Yes, sir.

4                   REPRESENTATIVE CLEMMONS: Yes, Senator  
5 Malloy. You're recognized.

6                   SENATOR MALLOY: Good morning, all.

7                   REPRESENTATIVE CLEMMONS: Good morning.

8 EXAMINATION BY SENATOR MALLOY:

9           **Q. Mr. Askins, I just got a couple questions to ask**  
10 **you in reference to the criminal arena. You mentioned the**  
11 **sentence reform and the issues that were sort of occurring.**  
12 **I just want to ask you if you had any opinion as it relates**  
13 **to sentencing guidelines for the -- any criminal matters**  
14 **where in -- and the basis of my question is, is that --**  
15 **that guidelines and -- you know, take discretion away from**  
16 **a trial judge. Are you a supporter of sentencing**  
17 **guidelines or not?**

18           A. Well, I think guidelines are fine. You know,  
19 when -- when there's no discretion at all, I think that's a  
20 problem. Because it's difficult to feed every -- every  
21 person out of the same spoon. I think, you know, you have  
22 to consider -- the judge has to consider a number of  
23 factors in doing that.

24           You know, years ago, Senator, I wrote a letter to  
25 the Chief Justice because I had a defendant in criminal

1 court who was accused of criminal sexual conduct. And it -  
2 - it really amounted to fondling someone who was under age.  
3 And he on his own volition sought psychiatrist --  
4 psychiatric help. He was -- he was attending sessions,  
5 counseling. He was a city councilman, he was -- he was the  
6 last person you would expect to be involved in that. But,  
7 you know, from the time this thing was exposed, he did all  
8 the right things. He went to court and he plead guilty,  
9 and -- and he received a sentence of ten years.

10 And in just a couple of months there was someone  
11 who was tried for -- for rape. In that same courtroom, he  
12 didn't plead guilty, he was -- he went to trial and he was  
13 convicted by the jury. And that person got probation. And  
14 my client, who was in prison, saw the newspaper article and  
15 clipped it out and he sent it to me. And he said, "How  
16 could this happen?"

17 And I wrote the Chief Justice, and I said, "This  
18 is his question, and I don't have a good answer for it. Do  
19 you?"

20 Now, I don't think you can -- you can impose  
21 mandatory sentencing to the point that there's no  
22 discretion, in -- in most cases. But guidelines, I think,  
23 can be very helpful.

24 **Q. And you know that the -- we have a tendency in**  
25 **our state to go against the guidelines. And the Federal**

1 Court pretty much imposes the guidelines. And so to add  
2 that to the component of sentence reform, which you say you  
3 got to study some on. But the other thing I wanted to take  
4 up issue to you is the issue as it relates to -- I call it  
5 drug laws and the war on drugs.

6 A. Yes, sir.

7 Q. I would say as a premise from the start, that the  
8 war on drugs did not work, as stated by many. That's  
9 obviously an opinion. But it looks like the State of South  
10 Carolina has already done sentencing in the face of trying  
11 to do the very same thing. And so the person that you were  
12 mentioning about, the drug issues -- one of the things that  
13 we've done is that the -- that the -- the drug usage in  
14 South Carolina, and across the nation, has overpopulated  
15 our prisons. And so I wanted to go to the point to say  
16 that for matters as it relates to drug court alternative  
17 sentencing, that you are able to end up making an offer --  
18 and, if elected, tell me your view on the -- on your  
19 alternative sentencing as opposed to incarceration.

20 A. Sir, I would be in favor of any type of program  
21 that could be implemented to reduce the number of people  
22 who are incarcerated. Again, you've got to -- you've got  
23 to -- it's a relative thing. You know, we've got to do  
24 what the prisons were designed to do. And yet --

25 Q. Just to lock up bad people. You and I are of the

1 same generation. We were PTI. But right now there -- we  
2 were doing PTIs and stuff in our generation.

3 A. Right. Right.

4 Q. But now the point I'm making is, is that there's  
5 a lot more. And so I just want to make certain that, one,  
6 for folks that will go on the bench, that they are in favor  
7 of alternatives to incarceration. Which is what I think  
8 our state --

9 A. Sir, I -- I think that we could do a lot more in  
10 terms of house arrests. We could do, you know, public  
11 service. And in certain situations, I'd like to see more  
12 of that done in appropriate cases. Let me -- let me say, I  
13 think -- thinking along the lines that you're thinking, the  
14 last case that I tried in General Sessions court, was an  
15 armed robbery case. The defendant was -- he was a co-  
16 defendant. The co-defendant was represented by the public  
17 defender. This was a 26-year-old African-American male, he  
18 had committed a prior armed robbery. If he were -- had  
19 been convicted of this -- of this offense, he would have  
20 been imprisoned for life with no parole. And a lot of  
21 folks say --

22 Q. Was that a third -- was that a third offense?

23 A. It was a second offense.

24 Q. Second offense?

25 A. Second offense. But his -- a lot of folks would

1 say, "Yeah, lock him up and throw away the key."

2 But this was not a typical armed robbery where he  
3 would go in and, with a gun, to a store or some -- or a  
4 bank or something. This was a situation that involved  
5 drugs, involved where people knew each other, and it was  
6 not a typical armed robbery. And, yet, technically, he was  
7 guilty of armed robbery, technically. But he wasn't going  
8 to hurt anything; he never intended to do that.

9 Now, I don't mean to say that he didn't commit a  
10 crime. He did. But did he need to go to prison for life?  
11 I don't think he did. Now, I -- I consented to be  
12 appointed in that case. And I made some motions and I did  
13 some research, and there was a -- there was some  
14 questionable procedures, some questionable line-ups. And -  
15 - and as a result of all of that, he was able to plead  
16 guilty to a common law robbery instead of the armed  
17 robbery, which would have sent him to prison

18 Q. Well, that's a serious -- a serious offense --

19 A. Right.

20 Q. -- in that category, I think was --

21 A. That -- that --

22 Q. -- address those issues.

23 A. -- that is correct. But that's a good example,  
24 though, Senator, of how somebody that, technically, would  
25 have gone there for life -- would have gone to prison for

1 life. And -- and the situation really didn't merit that in  
2 that case.

3 Q. And I -- and I think that there's a -- there's a  
4 whole body of law that we have done in this -- in this  
5 state. And I appreciate your -- your saying that you  
6 needed to get up-to-date on the -- on the new sentence  
7 reform matters that we passed in 2010. A lot of those  
8 things have changed. Talking to you a little bit more  
9 about it, I guess my main consideration is that, one, that  
10 you were -- that you were amenable to the alternative  
11 sentencing -- and, actually, obviously, the issues that we  
12 have with sentencing reform, where we've had a change in  
13 the mandatory sentences and there's some flexibility.

14 A. Yes, sir. Senator, I feel like, if somebody's  
15 not a threat to society, I would be -- I would be all out  
16 exploring alternatives to incarceration.

17 Q. And those are the terms we use as it relates to  
18 the criminal factors that are related to a person that is  
19 coming before court, and obviously things that you -- put  
20 it in simpler terms, making certain everybody -- that not  
21 necessarily fed out of the same spoon, we got to look at  
22 those factors. And as long as you're willing to look at  
23 those factors, I think that, that's what we're looking for  
24 as it relates to someone that goes on the bench and  
25 wouldn't mind be able to take that approach.

1           A.    Yes, sir.

2           **Q.    Thank you.**

3                    REPRESENTATIVE CLEMMONS:  Thank you, Senator  
4 Malloy.  Mr. Mack?

5                    REPRESENTATIVE MACK:  Mr. Chairman, Thank  
6 you.

7 EXAMINATION BY REPRESENTATIVE MACK:

8           **Q.    It's great to see you again.  I, too, thought**  
9 **that you conducted yourself with a -- with a lot of class**  
10 **during the last -- the last election.  I wanted to ask you**  
11 **your viewpoint as it relates to white collar crime versus**  
12 **other crimes.  A lot of times we could see difference in**  
13 **the settings and the treatment.  I wanted to get your views**  
14 **on that.**

15           A.    Well, it's -- I don't want to cross the line,  
16 here, of saying that, you know, if elected I will do this  
17 or that particular offence, or I will do that or the other  
18 particular offense.  But just in general --

19           **Q.    No, I just want to get your general viewpoint.  I**  
20 **wouldn't expect you to --**

21           A.    Generally speaking, I think in -- and a lot of  
22 the same lines as we were talking earlier about  
23 alternatives to incarceration, you know, a lot of white  
24 collar crime victims have lost money, but they haven't lost  
25 any skin or blood.  And I think a lot of times you have to

1 look at the distinction between a violent and a non-violent  
2 offense. Sometimes there would be a way for someone to not  
3 necessarily be incarcerated, but to allow somebody to keep  
4 working to support himself, with proper restrictions and --  
5 and make restitution to victims, would be a possibility.

6 But, now, as to whether -- as to whether somebody  
7 who is more fluent should not pay the penalty of  
8 incarceration versus somebody who's not? Then, no, that's  
9 not the way it ought to be. A judge has to be fair and  
10 impartial. And somebody's financial statement does not  
11 determine who goes to jail and who doesn't.

12 **Q. One other point, in terms of -- you know, with**  
13 **regards to being able to stay out to work for restitution,**  
14 **is that mind set -- and I know that this is not -- not a**  
15 **family court seat. But is that -- is that mind set, you**  
16 **think, applicable to someone in a situation going to jail**  
17 **for child support, for example, and if they're in jail,**  
18 **they're not able -- then they're really not able to make**  
19 **their obligations?**

20 A. Obviously, if he's in jail, he's not helping  
21 anybody. At the same time, I don't do a lot of family  
22 court work anymore, but I used to do an awful lot of it.  
23 But sometimes, Representative Mack, it takes -- it takes  
24 some jail time to get somebody's attention. You know, the  
25 judge can order somebody to pay child support, and if he

1 doesn't do it, they bring him back in and he still doesn't  
2 do it. And, you know, most of the time, in my experience,  
3 the judges have not been that quick to put somebody in jail  
4 for non-payment of child support. But -- but sometimes  
5 that's an appropriate remedy.

6           And I -- I've known people of all walks of life,  
7 not -- not necessarily poor people, but affluent people.  
8 But sometimes they just -- they don't see the need to  
9 comply until something's done to get their attention. And  
10 sometimes that's appropriate. It should be done as a last  
11 resort. 'Cause as I said, somebody's sitting in jail is  
12 not supporting anybody; he's being supported by the State.

13           REPRESENTATIVE CLEMMONS: Thank you,  
14 Representative Mack. Any other questions?

15           (No response.)

16           REPRESENTATIVE CLEMMONS: I have just a  
17 couple, Mr. Askins.

18 EXAMINATION BY REPRESENTATIVE CLEMMONS:

19           **Q. You've been practicing for how long?**

20           A. Thirty-nine years.

21           **Q. Thirty-nine years. You've encountered a lot of**  
22 **judges over those 39 years.**

23           A. Yes, sir.

24           **Q. If you were to pick one judge out of the entire**  
25 **lineup of judges that you've known throughout the years,**

1 **who would you say that you would most like to pattern your**  
2 **-- your time on the bench after, if you were to be elected?**

3 A. I've made mention of Judge Harwell, he was former  
4 Chief Justice. I always tended to call him Judge Harwell,  
5 even after he was Chief Justice, but --

6 **Q. Rest his soul. He just passed away in the last -**  
7 **-**

8 A. Yes, sir.

9 **Q. -- few weeks.**

10 A. And he -- you know, in our application, we submit  
11 reference letters. And a lot of my reference letters was  
12 from former Chief Justice Harwell. And it was very  
13 flattering to me, to have someone that I have so much  
14 respect for write a letter of recommendation for me. But  
15 he would be one that I would like to pattern myself after  
16 as far as the way he ran the courtroom. I -- I have a  
17 five-dollar bill that I won from him on the golf course,  
18 that he autographed for me. But he wrote underneath that:  
19 "Romney cheated." So, but I've still got that. But he  
20 also got some of my money on different occasions.

21 But I -- I thought the world of him. In fact,  
22 when he -- when he sent the letter to me, he called me up  
23 and said, "I feel like I need to go to confession."

24 But Judge Harwell was a man I respected a lot.

25 **Q. Thank you. You didn't cheat, did you?**

1           A.    Absolutely not.  Am I still under oath, Mr.  
2 Chairman?

3           **Q.    Mr. Askins, I'd like to also ask a little bit**  
4 **about your work ethic.  What kind of hours do you keep in**  
5 **your practice now?**

6           A.    You know, a small-town country lawyer doesn't do  
7 nine-to-five.  Very often, I will meet with somebody before  
8 working hours.  I still make house calls on occasion.  And  
9 today, when I finish up, I've got to go over and get some  
10 titles taken care of for a widow, whose husband just passed  
11 away, and -- and -- and then combine that with my trip  
12 today.  Very, very often, I -- I don't get home until, you  
13 know, after seven.  And depending on what's going on, is --  
14 it may be later than that.  In fact, my wife says, you  
15 know, "Why can't you have more regular hours?  Why can't  
16 you take two weeks off for vacation?  You know, like people  
17 at the plant can get two weeks or four weeks for vacation,  
18 why can't you do that?"

19                   And I'll say, "Well, you know, I -- I don't want  
20 to face what I have to face when I come back, for one  
21 thing."

22                   When I was in law school, we had a guy there who  
23 did a course of law office management, his name was Jay  
24 Fumberg [ph], I believe.  And one of the things he said  
25 was, "You should eliminate the cases that don't pay.  You

1 need to learn what is profitable and what is not. And you  
2 don't take the non-profitable cases."

3 In the -- in the area where I practice, you can't  
4 do that, you know. You know a lot of people -- I have  
5 people come, they can't afford to pay somebody, but they  
6 need somebody to help. And we do that a lot. It used to  
7 upset me to see somebody's name in the -- in the Bar  
8 publication that, you know, they gave a day for pro bono  
9 work. And, you know, a lot of times, country lawyers do a  
10 lot of pro bono work that doesn't get publicized. But so  
11 we do -- our hours are not necessarily regular. And we  
12 don't bill some of these guys in Columbia, I'm sure.

13 **Q. Thank you, Mr. Askins. And do you work on**  
14 **Friday?**

15 A. Yes, sir. We do work on Fridays. I typically  
16 have a doctor's appointment --

17 **Q. Your wife is agreeing with you.**

18 A. I typically have a doctor's appointment on  
19 Thursday afternoon. My doctor is my golf partner and my  
20 hunting and fishing buddy, and he and I play with my  
21 brother and my accountant, that grew up across the street.  
22 It is a -- an intensely competitive match. If somebody  
23 wins five dollars, they have a big day. But if we played  
24 for five thousand, it wouldn't be any more competitive than  
25 -- than it is.

1           So other than that, I'm usually in the office.  
2   And, you know, being located where we are, we have to  
3   travel to the courthouses. I travel to Kingstree to  
4   Florence to Georgetown to Conway to Marion to Sumter to  
5   Manning, and occasionally to Bishopville, and once in a  
6   while to Berkeley County. But we do, do a lot of traveling  
7   as well, and we try to, you know, combine our trips to make  
8   them most efficient.

9           **Q.    Would it be your intent to transfer that -- that**  
10 **work ethic to the bench?**

11          A.    Yes, sir. Absolutely. I have -- you know,  
12   again, you see all kinds of different ways that judges  
13   respond. I knew one judge, one time, if he got started by  
14   10:30, that was -- that was pretty good. On the other  
15   hand, we had a judge in Florence one time, who shall remain  
16   nameless, that started at 8:30. And, you know, at 5:30, he  
17   had no intent to stop. And that's a little much to the  
18   extreme the other way.

19          **Q.    We won't call Judge Anderson's name.**

20          A.    Well, I -- you know, I served on a committee that  
21   Judge Harwell had, when he was Chief Justice, called the  
22   Bench Bar Committee. He appointed a lawyer from every  
23   circuit and a judge from every court to be on that  
24   committee. And Judge Alex Sanders was on that committee,  
25   and he made reference to the same judge. And he said, "I

1 don't know what to do about him. I've had a number of  
2 complaints, but I can't fire him and I can't kill him."

3 REPRESENTATIVE CLEMMONS: Mr. Askins, those  
4 are all the questions I have. Senator Malloy has a follow-  
5 up.

6 RE-EXAMINATION BY SENATOR MALLOY:

7 Q. Mr. Askins, you know I'm a country lawyer too.  
8 Are you closed any other days in your office?

9 A. I'm sorry?

10 Q. Are you closed on any days of the week in your  
11 office? In my -- in my area, they close on Wednesday and  
12 on Fridays.

13 A. You know, when I was -- when I was a boy, they  
14 used to blow the siren at twelve o'clock on Wednesday, and  
15 it was like a ghost town after that. Everybody closed on  
16 Wednesday. But no, sir, we don't close any -- any weekday.  
17 When I first started practicing, no one took off the day  
18 after Thanksgiving; everybody worked on Friday. And for  
19 Christmas -- we got Christmas, and we tried to close a  
20 little early on Christmas Eve.

21 Now, our employees dictate some changes on that,  
22 you know, we're -- and I've only -- you know, usually three  
23 days for Christmas. Even if it falls on the weekend, they  
24 still want three days, you know. But no, I'm -- we're not  
25 closed any weekday.

1 Q. Are you familiar with the Indigent Defense Act of  
2 2007, where we have certain defenders now that represents  
3 those individuals that you were talking about, that could  
4 not afford attorneys? Are you familiar with that?

5 A. I'm sorry?

6 Q. Are you familiar with the Indigent Defense Act of  
7 2007, where we have circuit defenders, now --

8 A. Yes, sir.

9 Q. -- who represents those individuals?

10 A. Yes, sir.

11 Q. So the defender in your area would be --

12 REPRESENTATIVE CLEMMONS: Senator Malloy,  
13 the stenographer's having trouble with you. If you could  
14 speak more directly into the microphone.

15 BY SENATOR MALLOY:

16 Q. Are you familiar with the Indigent Defense Act?

17 A. Yeah, I'm familiar with that, somewhat.

18 Q. And do you have a certain defender in your area -

19 -

20 A. Right.

21 Q. -- that -- that is -- so I guess the question is  
22 -- now, is that do -- do you -- do you, since you're not on  
23 the list, do you still take some of those clients in your  
24 criminal practice?

25 A. I have. I mentioned earlier, that the last case

1 I tried, I agreed to be a party on -- where the public  
2 defender had the co-defendant.

3 Q. Right. But you -- but you're not -- but you  
4 don't -- you're not -- you don't -- not required to sign  
5 up; you do it as a -- on a voluntary basis?

6 A. I did on that one, yes, sir.

7 Q. And the -- the last one I wanted to end up making  
8 is, so you routinely have to go into the correction  
9 facilities and those kinds of things in your criminal  
10 cases?

11 A. When I did a lot of criminal work, you're in the  
12 jail a lot. A lot.

13 Q. Right.

14 A. Before hours, after hours, and during the day.

15 SENATOR MALLOY: Thank you.

16 REPRESENTATIVE CLEMMONS: Thank you, Senator  
17 Malloy. Any other questions?

18 (No response.)

19 REPRESENTATIVE CLEMMONS: Hearing none, Mr.  
20 Askins, it's a pleasure to have you with us. This will  
21 conclude this -- this portion of the screening process. As  
22 you know, the record will remain open until the report is  
23 published. And you may be called back at such time, if  
24 that need should arise. We will remind you of the 48-hour  
25 rule, and ask you to be mindful of that.

1                   Should anyone ask whether or not they may  
2 advocate on your behalf, we would ask that you remind them  
3 of the 48-hour rule, as you explained it to us.

4                   We thank you for offering. We thank you for  
5 your service to South Carolina.

6                   MR. ASKINS: Thank you, sir. Am I excused  
7 for the day?

8                   REPRESENTATIVE CLEMMONS: You are -- you are  
9 excused. Yes, sir.

10                  MR. ASKINS: Thank you.

11                                 (Candidate excused.)

12                  REPRESENTATIVE CLEMMONS: Staff has asked  
13 for a five-minute recess. We will take five.

14                                 (Off the record from 10:53 a.m. till 11:09 a.m.)

15                  REPRESENTATIVE CLEMMONS: Mr. Bloom, if  
16 you'd please raise your right hand, and be sworn.

17                                 WHEREUPON:

18                  JEFFREY P. BLOOM, being duly sworn and cautioned  
19 to speak the truth, the whole truth and nothing but the  
20 truth, testifies as follows:

21                  REPRESENTATIVE CLEMMONS: Mr. Bloom, have  
22 you had a chance to review your personal data  
23 questionnaire?

24                  MR. BLOOM: I have, sir.

25                  REPRESENTATIVE CLEMMONS: Is it correct?

1 MR. BLOOM: Yes. I had one -- one  
2 amendment.

3 REPRESENTATIVE CLEMMONS: Okay. So it's  
4 been amended once. Do you have -- need of making any other  
5 changes?

6 MR. BLOOM: No, sir.

7 REPRESENTATIVE CLEMMONS: As amended, do you  
8 have any objection to making that personal data  
9 questionnaire a part of your record of your sworn testimony  
10 today?

11 MR. BLOOM: I have no objection, sir.

12 REPRESENTATIVE CLEMMONS: Is there any other  
13 objection?

14 (No response.)

15 REPRESENTATIVE CLEMMONS: Hearing none, so  
16 ordered.

17 (EXHIBIT NO. 3 - Judicial Merit Selection  
18 Commission Personal Data Questionnaire for  
19 Jeffrey P. Bloom dated August 3rd, 2015)

20 REPRESENTATIVE CLEMMONS: Mr. Bloom, the  
21 Judicial Merit Selection Commission has thoroughly involved  
22 your qualifications for the bench. I think for the third  
23 time, if --

24 MR. BLOOM: Yes, sir.

25 REPRESENTATIVE CLEMMONS: -- I understand?

1 Our inquiry has focused on the nine evaluative criteria,  
2 and it has included a ballot box survey, a thorough study  
3 of your application materials, verification of your  
4 compliance with state ethics laws, a search of newspapers  
5 articles in which your name appears, a study of your  
6 previous screenings, and a check for economic conflicts of  
7 interest.

8 We received no affidavits filed in  
9 opposition to your election, and there are no witnesses  
10 present to testify. Do you have a brief opening statement  
11 that you'd like to share with the Commission?

12 MR. BLOOM: I'd like to say, briefly, my  
13 wife, Karen Fryar, could not be here today. She wanted to.  
14 She is a solicitor in Chester County for the 6th Circuit,  
15 and she's picking a jury this morning to prosecute a drug  
16 case. So she regrets she could not attend, but the  
17 citizens of Chester County needed her presence elsewhere.

18 REPRESENTATIVE CLEMMONS: Please let her  
19 know that we missed seeing her.

20 MR. BLOOM: Thank you, sir.

21 REPRESENTATIVE CLEMMONS: Mr. Bloom, Ms.  
22 Katherine Wells, as you know, is your screening attorney.  
23 And we would ask that you direct your attention to her, and  
24 respond to any questions she may have.

25 MR. BLOOM: Yes, sir.

1 MS. WELLS: Thank you, Mr. Chairman.

2 REPRESENTATIVE CLEMMONS: Thank you, Ms.  
3 Wells.

4 MS. WELLS: Mr. Chairman and members of the  
5 Commission, I have a procedural matter to take care of.

6 EXAMINATION BY MS. WELLS:

7 Q. Mr. Bloom, do you have before you the sworn  
8 statement you provided with detailed answers to over thirty  
9 questions regarding judicial conduct, statutory  
10 qualifications, office administration and temperament. Are  
11 there any amendments you would like to make at this time to  
12 your sworn statement?

13 A. No, ma'am. Other than that -- other than the one  
14 I'd previously mentioned.

15 MS. WELLS: All right. At this time, Mr.  
16 Bloom, I would ask that Mr. Bloom's sworn statement be  
17 entered as an exhibit to the hearing record.

18 REPRESENTATIVE CLEMMONS: Thank you, Ms.  
19 Wells. Is there any objection?

20 (No response.)

21 REPRESENTATIVE CLEMMONS: Hearing none, so  
22 ordered.

23 (EXHIBIT NO. 4 - Judicial Merit Selection  
24 Commission Sworn Statement of Jeffrey P. Bloom  
25 dated August 6th, 2015)

1 MS. WELLS: Members of the Commission, I  
2 note for the record that based on the testimony contained  
3 in the candidate's amended PDQ, which has been included in  
4 the record, with the candidate's consent, Mr. Bloom meets  
5 the constitutional requirements for disposition regarding  
6 age, residence, and years of practice.

7 BY MS. WELLS:

8 Q. Mr. Bloom, would you like to explain to the  
9 Commission why you want to serve as a circuit court judge,  
10 and how you feel your legal and professional experience  
11 thus far would assist you in becoming an effective circuit  
12 court judge?

13 A. Thank you, Ma'am. Yes, I would. Quite frankly,  
14 I think I would be good at it. And I don't say that out of  
15 ego; I say that with all humility and respect.

16 MR. BLOOM: Mr. Chairman, similar to what  
17 you and your colleagues who've run for the House and Senate  
18 have done in the past, you felt you have particular skills,  
19 life experience and qualities that you could bring that  
20 would benefit the citizens of your district and this state.  
21 And I feel I have that too.

22 A. Again, with all humility and respect. I've  
23 practiced for 25 years in this state. I have visited every  
24 circuit in this state, from Horry County to Abbeville, from  
25 Beaufort to Spartanburg, from Marion to Greenville, as well

1 as the Midlands. I've been in every circuit in this state.  
2 And I humbly think, from those experiences in those civil  
3 and criminal law, that I would bring in fairness and  
4 temperament and a knowledge of the law, that would benefit  
5 the citizens of this state. Both lawyers and -- and non-  
6 lawyer parties alike. And I -- and I humbly think I would  
7 be good at that. And I would have the temperament to do  
8 it.

9 I have focused -- and I'll sum up, because  
10 brevity is clarity -- that for the last three to five  
11 years, I have put an emphasis on civil practice. And I've  
12 associated myself with a number of civil law firms, in a  
13 wide variety of cases, negligence cases, personal injury,  
14 and some of the run-of-the-mill civil cases we have in our  
15 courts. And I've learned a lot from those experiences.  
16 And I think that has rounded out my experience. And I  
17 would add that both the Bar Committee as well as the  
18 Citizen's Committee found me well qualified in both civil  
19 and criminal law.

20 **Q. Thank you, Mr. Bloom. Are there any areas,**  
21 **including subjective areas of the law that you would need**  
22 **to additionally prepare for in order to serve as a circuit**  
23 **court judge? And if so, how will you handle that**  
24 **additional preparation?**

25 A. First, I don't think so. As I said, I've handled

1 over -- in 25 years, a wide variety of criminal and civil  
2 cases. In the last three to five years, I've done  
3 negligence cases, bankruptcy case, landlord/tenant. I have  
4 even done pro bono service. I do over a hundred hours of  
5 pro bono service a year. And in 2005, I was the South  
6 Carolina Bar Pro Bono Attorney of the Year. So I think I  
7 have a well-rounded background. I even served as a special  
8 master in a case -- I believe it's in the packet -- in  
9 Calhoun County, that was an action for collect of debt.

10 So I've done a wide range of cases. I think  
11 probably the only type I have not had experience in is  
12 either complex product liability or class action suits,  
13 which -- which tend to be rarer on our civil docket. But  
14 if I were tasked with one of those, I would certainly reach  
15 out to other circuit judges who've had that experience, and  
16 get their guidance.

17 **Q. Thank you. Although, you address this in your**  
18 **sworn affidavit, would you please explain to the members of**  
19 **the Commission what you think is the appropriate demeanor**  
20 **for a judge?**

21 A. Temperament. Temperament. Temperament. As I  
22 have traveled across the state, as I stated, and visited  
23 every circuit. I've been yelled at by some very smart  
24 judges. And I've come to understand what -- what lawyers  
25 as well as their clients, who for the most part are not

1 lawyers, want is to be treated fairly and with dignity.  
2 And I think I could do that. I -- you know, in my packet,  
3 as you've seen, a number of letters attesting to my  
4 character.

5 I think there are also five solicitors who have  
6 been willing to attest to my character, my temperament, and  
7 my fairness in this process. And they have supplied their  
8 names to staff. And that would be Solicitor Scarlett  
9 Wilson, out of the 9th Circuit for Charleston and Berkeley;  
10 Solicitor Barry Barnett from the 7th Circuit, out of  
11 Spartanburg and Cherokee; Solicitor Jimmy Richardson out of  
12 Horry and Georgetown Counties for the 15th Circuit;  
13 Solicitor David Pasco, 1st Circuit for Orangeburg, Calhoun,  
14 and Dorchester; and Solicitor Dan Johnson, here in Richland  
15 and Kershaw.

16 So I think one of the obvious criticisms I'll  
17 face up front, that people often say, "Well, Mr. Bloom, you  
18 were a public defender for 14 years, and you've done  
19 capital cases. How can you be fair?"

20 And I think with five solicitors attesting to my  
21 character, fairness, and temperament, that speaks for  
22 itself, I would hope.

23 **Q. Mr. Bloom, regarding the backlog of cases on the**  
24 **docket, what suggestions would you offer for improving that**  
25 **backlog, both for general sessions and for common pleas and**

1 **circuit court?**

2 A. In a -- in my humble experience, it means simply  
3 having court run, often past five o'clock, and through  
4 Friday afternoon, like most other folks hold down their  
5 Monday through Friday, nine to five jobs. When court  
6 breaks down, it doesn't serve anybody. From my experience,  
7 it takes, I think, getting all of the stakeholders together  
8 and making sure common pleas court or general sessions  
9 court runs with a full docket.

10 In general sessions court, the players are  
11 obviously in the Solicitor's office, Public Defender's  
12 office, the private bar. And the sheriff's department and  
13 the clerk's office, 'cause they're responsible for security  
14 and getting prisoner's there as well. And in common pleas  
15 court, it means getting both the plaintiff and defendants,  
16 civil law firms, small law firms, and large law firms  
17 together and fashioning a docket that runs. And we often  
18 got dinged for not -- we ran the Public Defender's office  
19 here in the '90s, keeping the judges busy right up till  
20 five o'clock on Friday, and then -- so it takes hard work.  
21 It takes bringing all the stakeholders together and making  
22 sure that the docket runs.

23 **Q. Thank you. The Commission received 128 ballot**  
24 **box surveys regarding you, with 17 additional comments.**  
25 **The surveys contained many positive comments noting your**

1 work -- your work ethic, your character, and your  
2 willingness to help others.

3 A few of the written comments, though, expressed  
4 concerns. One comment stated that they felt you were not  
5 suited to be a circuit court judge, because you lacked the  
6 necessary professional skills to be a circuit court judge.  
7 How do you respond to that?

8 A. You know, I'm a Boy Scout. I'm an Eagle Scout.  
9 I'm a volunteer Scoutmaster. And the adult training I've  
10 taken, we have a phrase that we're taught in Scouting, and  
11 that's "Feedback is a gift." And if I had a hundred  
12 positive comments and one negative, I would still seek to  
13 strive to accept that feedback as a gift, and overcome and  
14 work through that.

15 I think, as I've said before, I had a number of  
16 solicitors who attested to my character and fairness and  
17 temperament. In my packet, I think there's one deputy  
18 solicitor, Paula Edwards, who works here in Richland  
19 County, who wrote a character letter for me.

20 I have two sheriffs who've attested to my  
21 character, in their letters that are in the packet.  
22 Sheriff Thomas Summers of Calhoun County, and Sheriff  
23 Phillip Thompson from Horry County, who probably knows me  
24 better than any sheriff in this state, he and I started  
25 together. I was a baby lawyer and he was a baby road

1 deputy. But I accept that feedback and would strive to  
2 overcome any -- any deficiencies, and seek to again have  
3 temperament, fairness, and partiality.

4 **Q. As a follow-up to that, do you feel that any**  
5 **criticisms of your lack of civil trial experience are**  
6 **valid? And how do you respond to any of those criticisms**  
7 **about that?**

8 A. Well, you know, feedback is a gift. I have done  
9 a number of civil cases in the last five years; most of  
10 them have settled. I have done them in association with  
11 other law firms. I've done a wide variety of civil cases  
12 in magistrates court as well. I am conscious of that. But  
13 I've also done a lot of civil cases in the realm of post-  
14 conviction relief. And, you know, those cases are complex  
15 cases, and they operate under the same civil rules that all  
16 -- all common pleas cases do. And, again, so I'm very  
17 familiar with declaratory judgements, summary judgements,  
18 discovery, interrogatories, other applicable civil rules.  
19 So I would strive to -- to apply my knowledge and  
20 experience to that.

21 You know, I don't claim to be the best trial  
22 lawyer in the courtroom -- I've never said that -- but I do  
23 think I have honesty, a fairness and a temperament and a  
24 willingness to understand if there is criticism or feedback  
25 to correct that.

1           We -- we have a number of circuit judges in this  
2 state who have also served as public defenders or  
3 solicitors. And if I thought at any time I had a weakness,  
4 in order to have a bountiful experience in civil practice,  
5 I would go to those other circuit court judges to mentor me  
6 in that area, to make sure I was -- I was competent and  
7 effective and fair.

8           **Q. Thank you. What about comments that would say**  
9 **you would be biased in favor of criminal defendants, based**  
10 **on your years as a public defender in some defense for**  
11 **capital punishment cases?**

12           A. And I understand that. And I don't -- I don't  
13 bear any criticism for anyone who -- who feels that, based  
14 on my public defender experience, that -- that they would  
15 be concerned about bias. I would answer that in three  
16 ways:

17           First, as I've alluded to, y'all have elected  
18 over 20 circuit judges in this state who served honorably  
19 as either solicitors or public defenders, and those 20  
20 judges serve honorably today. Many of them have been  
21 mentors to me when I was a young lawyer. Steven John and  
22 Larry Hyman, circuit judges in Horry County, served on my  
23 board of directors when I was a public defender there. And  
24 Frank Addy, the public defender out of Greenwood, now a  
25 circuit judge. Tommy Russo from Florence was a public

1 defender. Daniel Hall, from York County, was a public  
2 defender. Jack Early, out of -- out of Aiken, Barnwell,  
3 and Bamberg, was on a public defender board. William  
4 Keesley, out of Edgefield/Lexington, was a public defender.  
5 John Hayes, out of York County, was one of the founding  
6 members of the South Carolina Defendant Attorney  
7 Association

8           So I would think I could model myself, as those  
9 judges have served, in their objective and fair application  
10 of the law, and application of the law of the facts. And  
11 if I had any concern, or anyone brought concern to me, I  
12 would -- I would be glad to talk to them and -- and ask  
13 them to mentor me in that case.

14           And my -- my door would be open to any solicitor  
15 -- and I should say not just solicitor, but any assistant  
16 solicitor who'd only been on the job one month, if they  
17 thought I had been unfair or -- or biased in any way in a  
18 particular case, to come and tell me that. And I would let  
19 solicitors and public defenders, as well as private bar  
20 know, if -- if I had -- you know, often lawyers are afraid  
21 to approach judges.

22           And I very much try to operate with an openness.  
23 And if I felt -- and I would tell those -- those assistant  
24 solicitors to please come and tell me if you think I've  
25 been unfair, and let's talk about it. And I'll try to be

1 aware of that in the future.

2 MS. WELLS: Just a few housekeeping issues,  
3 Mr. Chairman.

4 BY MS. WELLS:

5 Q. Mr. Bloom, have you sought or received a pledge  
6 of any legislator prior to this date?

7 A. No, ma'am.

8 Q. Have you sought or have you been offered a  
9 condition of pledge or support of any legislator pending  
10 the outcome of your screening?

11 A. No, ma'am.

12 Q. Have you asked any third parties to contact  
13 members of the General Assembly on your behalf?

14 A. No, ma'am.

15 Q. Are you aware of anyone attempting to intervene  
16 in any part of the process on your behalf?

17 A. No, ma'am.

18 Q. Have you contacted any members of the Commission?

19 A. No, ma'am.

20 Q. Do you understand that you're prohibited from  
21 seeking a pledge or commitment until 48 hours after the  
22 formal release of the Commission's report?

23 A. Yes, ma'am.

24 Q. Have you reviewed the Commission's guidelines on  
25 pledging?

1           A.    Yes, ma'am.

2           **Q.    And are you aware that the penalties for**  
3 **violating the pledging rules are a misdemeanor, and upon**  
4 **conviction the violator must be fined not more than one**  
5 **thousand dollars or imprisoned not more than 90 days?**

6           A.    Yes, ma'am.

7                        MS. WELLS:  I would note for the record,  
8 that the Citizen's Committee -- the Midlands Citizens  
9 Committee found Mr. Bloom to be overall well qualified, and  
10 also well qualified in the evaluative criteria of ethical  
11 fitness, character, professional and academic ability,  
12 reputation and experience and judicial temperament.  The  
13 Committee found Mr. Bloom to be qualified in the remaining  
14 evaluative criteria for constitutional qualifications,  
15 physical health and mental stability.

16                       I would note for the record, that any  
17 concerns raised during the investigation regarding Mr.  
18 Bloom, were incorporated into the questioning of him today.

19                       And, Mr. Bloom, I have no further questions.

20                       REPRESENTATIVE CLEMMONS:  Thank you very  
21 much, Ms. Wells.  Do the Commission members have any  
22 questions for Mr. Bloom?

23                       MR. WILCOX:  If I may.

24                       REPRESENTATIVE CLEMMONS:  Dean Wilcox.

25                       EXAMINATION BY MR. WILCOX:

1           **Q. Mr. Bloom, I'm going to ask you to be quick, to**  
2 **keep us on schedule.**

3           A. Yes, sir.

4           **Q. But just a quick question. With regard to**  
5 **technology, there's an increasing reliance on need for an**  
6 **understanding of electronic discovery. What experience do**  
7 **you have, or what education have you undertaken to**  
8 **familiarize yourself with --**

9           A. I can --

10          **Q. -- particular issues related to --**

11          A. I can answer this, briefly. I practice  
12 extensively in federal court. And federal court went to  
13 electronic filing some years ago; it is a completely  
14 paperless system. And when you have a presentation in  
15 court or a jury trial, you have to be familiar with the  
16 electronic apparatus in the courtroom for -- everything  
17 from showing of documents to a transcript to any records.  
18 So I've had training in federal court to do that. And I  
19 do, do that on a regular basis.

20                   MR. WILCOX: Thank you.

21                   REPRESENTATIVE CLEMMONS: Thank you, Dean  
22 Wilcox. Senator Malloy, you're recognized.

23 EXAMINATION BY SENATOR MALLOY:

24           **Q. Mr. Bloom, you were a member of the old**  
25 **sentencing guidelines commission, correct?**

1           A.    I was, sir.  Yes, sir.

2           **Q.    And you're familiar with the Sentence Reform Act**  
3 **of 2010?**

4           A.    Yes, sir.

5           **Q.    And give me your position on sentencing**  
6 **guidelines in the state system.**

7           A.    In the state system, we use it extensively in the  
8 federal system.  When I served on that commission, I was a  
9 proponent of not -- of us not adapting, quite frankly, the  
10 federal system.  You know, a federal court judge will do  
11 maybe five guilty pleas in one day.  Our circuit judges do  
12 that in an hour or two.  Every sentence in federal court,  
13 under the sentencing guidelines, a U.S. probation officer  
14 is assigned to do a thirty-plus page pre-sentence report,  
15 and recommend where they fall in the guidelines.  And we  
16 don't have that staff.  So I think just by sheer numbers,  
17 we cannot adapt the federal system.  It would bankrupt us.

18           **Q.    Are you a proponent of giving discretion to the**  
19 **state court judge in criminal system, as it relates to**  
20 **sentencing?**

21           A.    I think it is a -- yes, sir.  I think our judges  
22 have good discretion.  I think 99 percent of the cases, as  
23 you have seen, judges exercise that discretion when they --  
24 properly.  When they don't, they're accountable to the  
25 General Assembly.  And in the cases where there -- there

1 needs to be discretion tightened up, this -- this General  
2 Assembly has passed laws settled certain mandatory minimums  
3 and maximums and ranges for -- for multiple offense.

4 **Q. And in light of that, are you -- are you in favor**  
5 **of sentencing as it relates to mandatory minimums; i.e.,**  
6 **that we were at one point in time giving sentences that you**  
7 **had a mandatory five up to twenty? Or would you rather see**  
8 **it from zero to twenty, and leave it up to the judge?**

9 A. You know, I have to be candid. I don't have a  
10 position on that. I think that purely as a legislative  
11 prerogative, in terms of where those ranges fall, I fully  
12 understand. For example, in repeat offenders such as -- I  
13 alluded my wife, Karen Fryar, is in Chester. She is trying  
14 a drug case today, where it's a third offender, so he falls  
15 with a mandatory minimum. And I understand the  
16 Legislator's need in -- in those particular cases.

17 **Q. And you were a member of the Indigent Defense**  
18 **Board up until the mid-2007/2008 --**

19 A. I was, sir. I was one of the --

20 **Q. It was prior to the old --**

21 A. -- founding members --

22 **Q. -- the old system.**

23 A. Yes, sir.

24 **Q. Before they had the non-profits.**

25 A. Yes, sir.

1           **Q.    And have you had a chance to witness and see the**  
2 **new circuit defender system?**

3           A.    Yes, sir.

4           **Q.    And are you a supporter of the new circuit**  
5 **defender system?**

6           A.    I think it's one of the best things this General  
7 Assembly did.  The prosecutors --

8           **Q.    You know that's my bill.**

9           A.    Pardon me?

10          **Q.    It's my bill.**

11          A.    Yes, sir.  And I was -- I advocated that, you may  
12 recall, in the beginning of '90s.  So it took us a long  
13 time to get there.  And I thank you and Representative  
14 Smith for all your efforts in that.

15                You know, the Prosecutor's Office can only  
16 prosecute as many cases as the Public Defender's office can  
17 keep up with, depending on the percentage the Public  
18 Defender's office handles, as well as the Clerk of Court  
19 staff's shared staff.  So I think that went a long way --  
20 quite frankly, a good unintended consequence -- was to help  
21 reduce criminal dockets in most circuits, Because --  
22 because then you had training and adequate funding on both  
23 sides.  Even if you have a guilty plea, a guilty plea is --  
24 is the -- the defense lawyers have time to prepare that and  
25 negotiate it and move forward.

1           Q.    And in your -- in your practice, and in your  
2 philosophy that you would take to the bench, when you do  
3 have some flexibility, are you in favor of alternative  
4 sentencing?  When you and I -- when we -- when we first  
5 started practicing, we had pretrial intervention, and that  
6 was pretty much it.  And now we've changed so all scheduled  
7 could be a part of it.

8           A.    Right.

9           Q.    And so the question becomes, is that, are you in  
10 favor of alternative sentencing?  And I tell you before you  
11 answer it, is that we have made a mission of getting the  
12 amount of violence out of the prison system, so that our  
13 prison population is down from 25,000 to slightly over  
14 20,000.

15                   And so my question is: Is that as a person  
16 sitting upon the bench, would you look for ways for non-  
17 violence -- for ways to punish other than incarceration?

18           A.    When the General Assembly provides into law  
19 programs for a circuit court judge to consider someone for  
20 alternative sentencing, and when the person meets that  
21 criteria, and the Solicitor's office is in consent, I would  
22 look at that program, and -- and if the person qualifies,  
23 and they're within the law, and the Prosecutor's office is  
24 on board, I would look to place people -- and let me -- and  
25 let me answer it this way: My wife, Karen Fryar, besides

1 being a prosecutor in Chester County, is also a juvenile  
2 drug court judge.

3 **Q. Let me ask you a question.**

4 A. I'm sorry.

5 **Q. Why does the solicitor have to consent?**

6 A. Well, for example in PTI, the solicitor has to  
7 consent. So I use that, if it's a parameter in the law,  
8 the General Assembly has required some alternative  
9 sentencing formulations that the Solicitor's office has to  
10 consent. If the Solicitor's office doesn't have to  
11 consent, then I would -- I would just make sure that the  
12 defendant is otherwise qualifying for that program.

13 And the example I would give is -- is -- as I  
14 started to say, my wife also serves as a part-time juvenile  
15 drug court judge here in Richland County, with Judge Bruce  
16 Williams. And that program affects a small number of  
17 juvenile defendants and non-violent defendants in family  
18 court, has had remarkable success.

19 And I want to thank the General Assembly for  
20 those types of programs. You're taking juveniles, who are  
21 having their first contact with the law, in a non-violent  
22 way, but have an underlying substance abuse problem, and  
23 the recidivism -- recidivism rate among those juveniles is  
24 almost zero. She -- she got a letter, recently, from a  
25 juvenile she had in drug court, that she kept in there for

1 almost two years -- he's now an adult in Georgia, has a  
2 successful business and has turned his life around. So  
3 that's -- that's a type of alternative program, is one of  
4 the parameters there the General Assembly sets out, and the  
5 person who qualifies -- to see if the person is eligible  
6 for that.

7 SENATOR MALLOY: Thank you, sir.

8 REPRESENTATIVE CLEMMONS: Any other  
9 questions? Mr. Hitchcock.

10 MR. HITCHCOCK: Thank you, Mr. Chairman.

11 EXAMINATION BY MR. HITCHCOCK:

12 Q. Mr. Bloom, I certainly appreciate you being here  
13 today, and offering up your service to be a circuit court  
14 judge. And let me just say that when it comes to your  
15 experience as a public defender, I tell -- when I have a  
16 chance to talk to young lawyers, I tell them that I believe  
17 that being a public defender or a solicitor is probably the  
18 best incubator that they could ever have to -- to how --  
19 really, to gain experience as a young lawyer. And, you  
20 know, sometimes even people who have emerged from the  
21 Public Defender's office even find themselves on the  
22 Judicial Merit Selection Commission. So it's a -- it's a -  
23 - it's something that I share with you -- an experience I  
24 share with you. And I believe it's a fantastic one.

25 One of the -- in looking over your materials, one

1 of the things that I believe that you've been questioned  
2 on, or felt that it was necessary to address, was your view  
3 on the death penalty. And in your -- in your comments on  
4 that, you allude to the tragic incident involving Officer  
5 Alia from Forest Acres. And I think you described that you  
6 have a personal connection there. And I think that -- I  
7 can certainly understand your perception of how that might  
8 be a case that would be worthy of the death penalty. And I  
9 think that probably we all agree that the -- the horrific  
10 acts by Emanuel would also be another instance where it  
11 might be worthy of the application. But given -- you know,  
12 as a -- given your experience in handling capital cases,  
13 and your role as the judge in a potential capital case, if  
14 you were called upon to preside over a capital case, and  
15 you had a -- an instance where the acts may not be quite as  
16 heinous or shocking or -- obviously, not having a personal  
17 connection, how would you, I guess, handle, you know, the -  
18 - or your role as a -- as a judge in that instance, if the  
19 jury did return a verdict imposing the death penalty?

20 A. If I can give a short answer and then a longer  
21 answer, 'cause I think your question deserves both. It's  
22 the law, and I can impose it. That's the short answer.

23 You all may know -- and I think I -- this may be  
24 in my materials, Greg Alia was the Forest Acres police  
25 officer who was recently killed in the line of duty. I am

1 very active on Boy Scouts. I'm a volunteer scoutmaster.  
2 Greg Alia was an older Scout when my sons were Eagle Scout,  
3 and they're young -- were young tenderfoots. And he was a  
4 mentor to them. He was one of our Eagle Scouts, Greg Alia.  
5 And so I've got a -- I do get a -- I get why we have that  
6 law, and why it has to be imposed in some heinous cases.

7           And I would also respond in -- in three ways:  
8 Again, we have a number of circuit judges in our state who  
9 served as prosecutors and public defenders, and they  
10 presided over those cases and had imposed it when  
11 necessary. And I could do the same. And I -- if I felt I  
12 needed to, I would go to them and ask them to mentor me in  
13 a particular case, or counsel me. I would not hesitate if  
14 -- if the case were, as you've described, Mr. Hitchcock, to  
15 impose it. That's why we have the law. And there are some  
16 cases that call for it. I would ask not to be judged by  
17 the cases I've been appointed to when I was a public  
18 defender.

19           The second: Again, I have had five solicitors in  
20 the process, attested -- attest to my character,  
21 temperament, and fairness. And every one of those five  
22 I've mentioned, Scarlett Wilson, Jimmy Richardson, Gary  
23 Barnett, David Pasco, and Dan Johnson, I have been on the  
24 opposing side in the case such as you've described, except  
25 for Dan Johnson. And every one of them found that I was

1 civil, unbiased, objective, and I treated them with  
2 courtesy and civility. And I would make sure all the  
3 participants in such a case were treated the same. And,  
4 again, if I could impose it, I would.

5 And lastly, and I've said this before, but I'm  
6 married to a prosecutor. Karen Fryar prosecutes in the 6th  
7 Circuit in Chester County. And she comes home every week,  
8 she takes those cases to heart. And those deputies, the  
9 job they do, she takes that to heart. And I see the  
10 challenges all the solicitors face, as well as our public  
11 defenders. And I know, firsthand. I lived it. But I see  
12 that when she comes home and has those stories, that she  
13 takes to heart.

14 You know, I would add, very briefly, Mr.  
15 Hitchcock, she started working for Solicitor Doug Barfield,  
16 who is retiring this fall, and Solicitor Randy Newman won  
17 the election and took over in January. Mr. Newman did not  
18 have a lot of experience as a practicing solicitor -- I'm  
19 not telling stories about him. He and I have met and  
20 talked about. They have a difficult drug and gang problem  
21 in Chester and Lancaster County, 'cause I-77 runs right  
22 through it.

23 Given my experience in federal court, and the  
24 contacts I've made there, and the friendships and those  
25 colleagues in the Department of Justice, I was able to

1 introduce Solicitor Johnson to people in the Department of  
2 Justice here in the Federal Prosecutor's office, and they  
3 are now bringing resources to the state level to help -- to  
4 help Solicitor Newman.

5 And so I get it. I get what our system --  
6 citizens need, and the protection they need. And I would  
7 be fair and impartial to all parties.

8 MR. HITCHCOCK: Thank you, Mr. Chairman.

9 SENATOR MALLOY: Mr. Chair?

10 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
11 Hitchcock. Senator Malloy.

12 RE-EXAMINATION BY MR. MALLOY:

13 Q. So and -- and, in fact, I'm going to follow-up on  
14 the -- the death penalty discussion. You may not know it,  
15 I'll just say I represent some individual that was  
16 assassinated down in the Charleston case. And I just think  
17 that's an issue that would come up for our state at some  
18 point in time. And just to be clear from the Commission,  
19 you have been death-penalty certified in this state for how  
20 long?

21 A. You know, I tried my first capital case as a baby  
22 public defender, I was there for six months. I think I had  
23 been death penalty certified by the South Carolina Supreme  
24 Court since about --

25 Q. A long time.

1 A. -- 1992 or so. Yes, sir.

2 Q. And, basically, the people that serve on the jury  
3 are people that have not decided, one way or the other.

4 A. Correct.

5 Q. They could not be a proponent, or they could not  
6 be an opponent --

7 A. Correct.

8 Q. -- and so you've got a neutral person, so we can  
9 be clear.

10 A. Correct.

11 Q. But what you are saying, actually is, is that --  
12 is that -- that you will following the law of the land.

13 A. Yes, sir.

14 Q. And that, basically, if that's what the law is.  
15 And so if there -- there are certain cases whenever there's  
16 an ultimate crime, you think it deserves an ultimate  
17 punishment, as the law in the State of South Carolina --

18 A. Yes, sir.

19 Q. -- says? And if in the event that if you have  
20 seen that there have been people that say they forgive, and  
21 we decide to abolish the death penalty, you would be the  
22 same way, because it's legislative issues, correct?

23 A. It is very much a legislative issue. And I think  
24 you raise a good point, Senator Malloy, on judicial  
25 philosophy. I am not, you know, campaigning or running for

1 a state supreme court position, where they sometimes have  
2 to interpret and apply legislation as a matter of policy.  
3 A circuit court judge takes the law as you have written it,  
4 and has been applied by higher courts, and applies it to  
5 the facts in a very careful and concise way. I don't think  
6 circuit judges make policy.

7 **Q. But there are conceivable times when one, in a**  
8 **capital case, would plead guilty, obviously, and waive a**  
9 **jury --**

10 A. Correct.

11 **Q. -- that could come before the judge.**

12 A. Correct.

13 **Q. At that point in time, I guess now you're saying**  
14 **that I support or don't, and that kind of thing, and just -**  
15 **- I think that what you are telling us is that, whatever**  
16 **the law of the land is, that you would be able to abide by**  
17 **it.**

18 A. I could apply the law and the facts objectively.  
19 I can apply it fairly, in whatever sentence was required.

20 **Q. Thank you.**

21 A. And, again, I think that's -- that's why five  
22 solicitors, including four who I've tried cases with, have  
23 attested to my fairness, my temperament, and my lack of  
24 bias.

25 **Q. Thank you.**

1                   REPRESENTATIVE CLEMMONS: Thank you, Senator  
2 Malloy. Any other questions?

3                   (No response.)

4                   REPRESENTATIVE CLEMMONS: Hearing none, Mr.  
5 Bloom, we want to thank you so much for being here and  
6 offering for this judicial position. That concludes this  
7 portion of our screening process. And, Mr. Bloom, as you  
8 know, the record will remain open until such time that --  
9 the record will remain open until the report is published.  
10 And you may be called back at such time, if that need  
11 should arise.

12                   I'll remind you of the 48-hour rule and ask  
13 if you'd be mindful of it. If anyone should inquire  
14 whether or not they may advocate on your behalf, we ask you  
15 to educate them on the 48-hour rule.

16                   MR. BLOOM: Yes, sir.

17                   REPRESENTATIVE CLEMMONS: We thank you for  
18 offering. And we thank you for your desire to serve the  
19 State of South Carolina.

20                   MR. BLOOM: Thank you.

21                   REPRESENTATIVE CLEMMONS: Thank you, sir.

22                   MR. BLOOM: May I just say in conclusion,  
23 very briefly, you know, my father was a World War II  
24 veteran, my son has done two tours in Iraq, and is  
25 scheduled to go back a third time, I've seen firsthand

1 their service and sacrifice. I don't claim that being a  
2 judge is near -- equivalent to military service. But I  
3 think I have qualities and knowledge and skills and a  
4 temperament that would serve the citizens of this state  
5 well, and make this general assembly proud. And I would  
6 strive to make you proud, if you make a wise and judicious  
7 choice. Thank you for your time.

8 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
9 Bloom.

10 (Candidate excused.)

11 REPRESENTATIVE CLEMMONS: Ladies and  
12 gentlemen, I just did a quick calculation. If we take the  
13 same kind of time we've taken on the first two candidates,  
14 we will be here until eleven o'clock tonight. I want you  
15 to be complete and thorough in your investigation, but just  
16 be aware that we are running well over time.

17 REPRESENTATIVE BANNISTER: So, Mr. Chairman,  
18 you're advising the staff attorneys to speed up the  
19 questions?

20 REPRESENTATIVE CLEMMONS: I share that, if  
21 anyone would like. Good morning, Mr. Epting.

22 MR. EPTING: Good morning.

23 REPRESENTATIVE CLEMMONS: Good to have you  
24 with us.

25 MR. EPTING: Thank you.

1                   REPRESENTATIVE CLEMMONS: We have before us  
2 Joseph M. Epting, Jr, seeking nomination to the Circuit  
3 Court, At-Large, Seat 10. Mr. Epting, if you could raise  
4 your right hand and be sworn.

5                   WHEREUPON:

6                   JOSEPH M. EPTING, JR., being duly sworn and  
7 cautioned to speak the truth, the whole truth and nothing  
8 but the truth, testifies as follows:

9                   REPRESENTATIVE CLEMMONS: Have you had a  
10 chance, Mr. Epting, to review your personal data  
11 questionnaire?

12                  MR. EPTING: I have, yes.

13                  REPRESENTATIVE CLEMMONS: Is it complete and  
14 correct?

15                  MR. EPTING: It is

16                  REPRESENTATIVE CLEMMONS: Are there any  
17 changes that need to be made?

18                  MR. EPTING: There are none.

19                  REPRESENTATIVE CLEMMONS: Okay. Would you  
20 have any objection to us making that personal data  
21 questionnaire a part of your sworn testimony today?

22                  MR. EPTING: No.

23                  REPRESENTATIVE CLEMMONS: Is there any  
24 objection?

25                  (No response.)

1                   REPRESENTATIVE CLEMMONS: So ordered. It  
2 will be a part of the record.

3                   EXHIBIT NO. 5 - Judicial Merit Selection  
4                   Commission Personal Data Questionnaire of Joseph  
5                   M. Epting, Jr. dated August 17th, 2015)

6                   REPRESENTATIVE CLEMMONS: Mr. Epting, the  
7 Judicial Merit Selection Commission has thoroughly  
8 investigated your qualifications for the bench. Our  
9 inquiries focused in the nine evaluative criteria, and it's  
10 also included a ballot box survey, a thorough study of your  
11 application materials, verification of your compliance with  
12 state ethics laws, a search of newspaper articles in which  
13 your name appears, a study of previous screenings, a check  
14 for economic conflicts of interest.

15                   And today, we've received no affidavits  
16 filed in opposition to your election, and there are no  
17 witnesses here to testify.

18                   Do you have a brief opening statement that  
19 you'd like to share with us?

20                   MR. EPTING: Just pleased to be here. I  
21 appreciate you having me in front of -- in front of you,  
22 and I'm happy to answer any questions you've got.

23                   REPRESENTATIVE CLEMMONS: Thank you, Mr.  
24 Epting. We would ask that you please direct your attention  
25 to your screening attorney, and respond to any questions he

1 may have.

2 MR. EPTING: Great.

3 MR. GENTRY: Mr. Chairman and members of the  
4 Commission, I have a procedural matter to take care of with  
5 this candidate.

6 MR. GENTRY: Mr. Epting, you have before you  
7 the sworn statement you filed with detailed answers to over  
8 thirty questioning regarding judicial conduct, statutory  
9 qualifications, office administration, and temperament.  
10 Are there any amendments you'd like to make at this time to  
11 your sworn statement?

12 MR. EPTING: No.

13 MR. GENTRY: At this time, Mr. Chairman, I'd  
14 ask that Mr. Epting's sworn statement be entered as an  
15 exhibit into the hearing record.

16 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
17 Gentry. Is there any objection?

18 (No response.)

19 REPRESENTATIVE CLEMMONS: Hearing none, so  
20 ordered.

21 (EXHIBIT NO. 6 - Judicial Merit Selection  
22 Commission Sworn Statement of Joseph M. Epting,  
23 Jr. dated August 5th, 2015)

24 MR. GENTRY: One final procedural matter,  
25 I'd note for the record that based on the testimony

1 contained in the candidate's PDQ, which has been included  
2 in the record with the candidate's consent, Mr. Epting  
3 meets the statutory requirements for this position  
4 regarding age, residence, and years of practice.

5 EXAMINATION BY MR. GENTRY:

6 **Q. Mr. Epting, why do you now want to serve as a**  
7 **circuit court judge, and how do you feel your legal and**  
8 **professional experience thus far will assist you to be an**  
9 **effective judge?**

10 A. I've wanted to be a judge since I was kid.  
11 Oftentimes, we grow up and we want to do things we see our  
12 parents do, not because of the -- our parents did it,  
13 because we see the importance of it. And for me growing  
14 up, my dad was, among other things, a little town judge in  
15 the Town of Chapin. So as a kid, my trips on Wednesday  
16 nights were to the fire station in Chapin, where they would  
17 back the fire engines out and they would set up a table,  
18 and that's where my dad would hold court. And that's where  
19 it started.

20 And in a small town like that, you know, you can  
21 see the importance of that position, the importance of  
22 treating people with the respect. And as to now, it takes  
23 a while and life experiences under your belt, in my  
24 opinion, anyway, to -- to get the experience, just the life  
25 experience to be a judge. I'm 45. I don't think at 42, I

1 had those life experiences. But I do now. And so that  
2 brings us to today.

3 **Q. Are there any areas, including subjective areas**  
4 **of the law, that you'd need to do additional preparation in**  
5 **order to serve as a judge? And how would you go about that**  
6 **preparation?**

7 A. I'm fairly well-rounded. But I think I would  
8 certainly -- my experience leans towards the civil side.  
9 The criminal matters, you know, again, town stuff -- small  
10 stuff, I would largely conflict out of, as a young  
11 attorney, because my father was a judge. But I've done a  
12 lot of court-appointed work, criminal cases, trials. But  
13 criminal is definitely where, if you look, that would  
14 probably be my weakness.

15 I also clerked for Judge Kinard, so I've been  
16 involved in capital murder cases; we were assigned one of  
17 those during the year. So although I think I'm balanced, I  
18 think it would be fair to say that criminal is where I  
19 would need to focus mostly on.

20 **Q. Could you explain to the members of the**  
21 **Commission what you think is the appropriate demeanor for a**  
22 **judge?**

23 A. The appropriate demeanor is one of respect, first  
24 and foremost. And, you know, I tell a story that my first  
25 day of being a law clerk with Judge Kinard, we went to -- I

1 think it was Sumter, and it was a pro se guy. And he had  
2 taken -- he was getting ready to lose his farm. He had  
3 taken one of the tall building firms back and forth to this  
4 Supreme Court. And it was clearly over, everybody else had  
5 conflicted out. And so we walk in there, and immediately  
6 upon hearing -- it was the only hearing that day. And all  
7 three of the defense attorneys stood up, ready to tell  
8 Judge Kinard what was getting ready -- you know, what they  
9 wanted. And he asked them to sit down, and he would tell  
10 them when he needed to hear from them. And he let that guy  
11 talk for 45 minutes. And at the end of the day, the thing  
12 that we all knew was going to happen in the first minute,  
13 happened. And the man lost his motion.

14 And I asked Kinard as we were leaving, I said,  
15 "Why did you give that -- we had other things we could have  
16 been doing. And you gave that guy 45 minutes, an hour to  
17 talk. Why did you do that?"

18 And he said, "'Cause people need to feel like  
19 they've been heard. And the results will take care of  
20 themselves, but if they feel like they've heard, the  
21 system's working."

22 And that's what he did that day. And I think  
23 that's the most important thing.

24 **Q. What suggestions would you offer for improving**  
25 **the backlog of cases on the docket, both in the general**

1 **sessions and the common pleas docket?**

2 A. I don't have as much experience in the backlog of  
3 general sessions, and I know the solicitor's largely  
4 control that docket. But in common pleas, I got to be  
5 honest, I like the trial that they're doing with the  
6 motions now, where you can submit the motions and they have  
7 an opportunity to be heard without a hearing. I think that  
8 two-thirds of motions probably don't need a hearing; you  
9 can submit a brief and -- and rule on that. You know, a  
10 motion to compel, or things like that.

11 And while it's not as difficult in, say, Richland  
12 County, where you've got a lot of terms of court, I can see  
13 that would be very problematic to get your motion heard.  
14 In a smaller venue that -- you know, Bamberg, Barnwell,  
15 something like that where they just don't have that many  
16 non-jury terms of court. So I like where that's going.  
17 And I think some play off of that would greatly help in  
18 reducing the backlog.

19 **Q. The Commission received 107 ballot box surveys**  
20 **regarding you, with 13 additional comments. The ballot box**  
21 **survey, for example, contained the following positive**  
22 **comments: "A very good lawyer who would make an excellent**  
23 **judge."**

24 **One of the written comments expressed concerns.**  
25 **One comment indicated that you do not possess the requisite**

1 **experience, acumen, or professional skills to be a judge.**

2 **What response would you offer to this concern?**

3 A. Well, I would respectfully disagree. My  
4 experience is -- you know, I'm not going to go back through  
5 it. I mean, we already went through that. But I've  
6 handled a broad array of civil cases and criminal cases. I  
7 think my teaching CLEs and my law school experience after  
8 that -- or before that, excuse me -- show I've got the  
9 educational experience. I don't know, one out of only  
10 ain't bad, though, I guess.

11 **Q. Thank you, Mr. Epting. Have you sought or**  
12 **received a pledge of any legislator prior to this date?**

13 A. No, I have not.

14 **Q. Have you sought, or have you been offered a**  
15 **conditional pledge of support of any legislator pending the**  
16 **outcome of your screening?**

17 A. No, I have not.

18 **Q. Have you asked any third parties to contact**  
19 **members of the General Assembly on your behalf?**

20 A. No, I have not.

21 **Q. Are you aware of anyone attempting to intervene**  
22 **in any part of the process on your behalf?**

23 A. No.

24 **Q. Have you contacted any members of this**  
25 **commission?**

1           A.    I think I put in my statement, that I had made  
2 one phone call to Senator Malloy's office.  And, quite  
3 frankly, it was before I even picked up the packet.  And I  
4 didn't realize those implications.  The Senator didn't call  
5 me back, as he should have.  And so that was -- you know, I  
6 immediately called the Counsel and let her know what I had  
7 done.  But other than that, there's nothing.

8           **Q.    Do you understand that you're prohibited from**  
9 **seeking a pledge or commitment until 48 hours after the**  
10 **formal release of the Commission's report?**

11          A.    I do.  Yes.

12          **Q.    Have you reviewed the Commission's guidelines on**  
13 **pledging?**

14          A.    I have.  They were handed as a part of the  
15 packet.

16          **Q.    As a follow-up, are you aware of the penalties**  
17 **for violating the pledging rules; that is, it is a**  
18 **misdemeanor, and upon conviction, the violator must be**  
19 **fined not more than one thousand, or imprisoned not more**  
20 **than 90 days?**

21          A.    I am aware of that.

22                   MR. GENTRY:  I would note that the Midlands  
23 Citizens Committee found Mr. Epting qualified in the  
24 evaluative criteria of constitutional qualifications,  
25 physical health, and mental stability.  The committee found

1 him well qualified in the evaluative criteria of ethical  
2 fitness, professional and academic ability, character,  
3 reputation, experience, and judicial temperament. The  
4 committee stated in summary, "Mr. Epting has a good mix of  
5 criminal and civil experience. All reports and our  
6 observations confirm that he has a good demeanor for a  
7 judge. His colleagues think of him as a fair person. Mr.  
8 Epting is well qualified to be a circuit court judge, both  
9 in experience and demeanor."

10 I would note that for the record any concerns  
11 raised at this point, were raised in this questioning. Mr.  
12 Epting, at this time I have no further questions.

13 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
14 Gentry. Any questions by Commission members? Senator  
15 Malloy is recognized.

16 SENATOR MALLOY: Thank you, Mr. Chair.  
17 First, let me report to the Committee that Mr. Epting is  
18 associated with the Mullis Law Firm now. And I was the  
19 clerk for Bo Mullis back in the old, old days. And he was  
20 a very close friend of mine, before his passing. I'd also  
21 report that his partner and himself, most likely  
22 contributed to my campaign in the last 12/13 years, along  
23 with his father -- I'm sure he did. And Bo Mullis  
24 certainly -- certainly did. And I think we practiced  
25 together at that time as well. So I'd like the Committee

1 to be aware of that.

2 EXAMINATION BY SENATOR MALLOY:

3 Q. Mr. Epting, I would -- I'll be brief. One, I  
4 know that you are -- that you are a proponent of  
5 alternative sentencing.

6 A. Yes.

7 Q. And you're familiar with drug courts and those  
8 kind of things? Have you been supportive of those in the  
9 past?

10 A. I am. Judge Williams started that. And it's a  
11 good idea.

12 Q. And, also, you are a proponent of guidelines --  
13 of sentencing guidelines, that the court should have  
14 flexibility in the sentencing.

15 A. Yeah, I -- I think that over the course the  
16 experiments with sentencing guidelines, we've seen that  
17 flexibility is really almost necessary to make that work.

18 Q. And I think that you have -- are you death-  
19 penalty certified?

20 A. I am not.

21 Q. Have you been involved in a death penalty case?

22 A. I was when I clerked with Judge Kinard. We were  
23 assigned one, yeah.

24 Q. But your practice has been largely criminal and  
25 civil?

1           A.    It is.  Most of my criminal was court-appointed  
2 cases.  Some private, but mostly court-appointed.

3                    SENATOR MALLOY:  All right.  That's all the  
4 questions I have.

5                    REPRESENTATIVE CLEMMONS:  Thank you, Senator  
6 Malloy.  Other members?  Dean Wilcox is recognized.

7 EXAMINATION BY MR. WILCOX:

8           **Q.    I'm going to ask a question answer to this, to**  
9 **keep us on schedule.  But given the likelihood that you'll**  
10 **be asked to resolve disputes involving electronic**  
11 **discovery, and the issues that are particularly related to**  
12 **electronic storage of information, what experience do you**  
13 **have, or what education have you tried to get for yourself**  
14 **regarding that -- those issues in particular?**

15           A.    You know, we see that pop up a lot more in my  
16 federal litigation.  And I tell you, Dean, nine out of ten  
17 times, we can set initial parameters in the pretrial  
18 scheduling order and the 26(f) conference.  It covers most  
19 of the electronic discovery.  I understand it can get wildy  
20 out of hand, but I -- we've always been able to work it out  
21 in 26(f).  The couple of times we haven't, it was a quick  
22 ruling from a federal district judge.

23           **Q.    Thank you.**

24           A.    Yeah.

25                    REPRESENTATIVE CLEMMONS:  Thank you, Dean.

1 Representative Bannister is recognized.

2 EXAMINATION BY REPRESENTATIVE BANNISTER:

3 Q. Mr. Epting, in your sworn statement, you answered  
4 the question regarding your philosophy on recusal, and  
5 asked specifically in situations regarding lawyer  
6 legislators, and you said, "Should have an attorney or  
7 party to the litigation have a concern, I would recuse  
8 myself."

9 You mean any -- any party -- any lawyer to an  
10 action, would that be -- the opposing counsel is a lawyer-  
11 legislator should say, "I want you to recuse yourself," you  
12 could take that position? Did you intend to answer the  
13 question that day?

14 A. No. I guess my intent would be if I had some  
15 prior dealings with the lawyer-legislator, that would fall  
16 under the normal judicial guidelines for recusing yourself.  
17 Just because they're a lawyer and a legislator, doesn't --

18 Q. I mean, obviously, every -- let's say you're the  
19 only person in the race, and everybody in the General  
20 Assembly votes for you --

21 A. That would be nice.

22 Q. -- if somebody makes that motion, what is your  
23 position on recusing yourself?

24 A. I don't think I'm required to recuse myself under  
25 that.

1           **Q.    Okay.**

2           A.    I mean, does that answer your question,  
3 Representative?

4           **Q.    It does.  The way you answered it, it appeared**  
5 **that if a party made the motion, that you would recuse**  
6 **yourself.  So I was trying to understand the idea that**  
7 **being a lawyer-legislator would cause you a conflict, that**  
8 **you would need to do that.**

9           A.    That was obviously a poorly-answered question on  
10 my part.

11          **Q.    I'm just making sure I understood your position.**

12                    REPRESENTATIVE CLEMMONS:  Thank you, Mr.  
13 Bannister.  Any other questions?  Members?

14                            (No response.)

15                    REPRESENTATIVE CLEMMONS:  Hearing none, Mr.  
16 Epting, thank you so much.  Oh, excuse me.  We have one  
17 matter to take up very briefly in executive session with  
18 regard to this candidate.  Chair will entertain a motion to  
19 go into executive session.

20                            REPRESENTATIVE BANNISTER:  I move.

21                            REPRESENTATIVE CLEMMONS:  We have a motion.  
22 I'll lower the vale and ask that the doors be closed.

23                            (Off-the-record executive session.)

24                            REPRESENTATIVE CLEMMONS:  Mr. Epting, thank  
25 you for being here and your offering for public service on

1 the bench. That concludes this portion of our screening  
2 process. As you know, the record will remain open until  
3 the report is published. You may be called back at such  
4 time, if that need should arise.

5 We remind you of the 48-hour rule. We ask  
6 you to be mindful of it. And should anybody ask whether  
7 they can advocate on your behalf, we would ask that you  
8 educate them with regard to the 48-hour rule. We thank you  
9 for offering, and we thank you for your desire to serve the  
10 State of South Carolina.

11 MR. EPTING: Thank you.

12 REPRESENTATIVE CLEMMONS: Thank you, sir.

13 (Candidate excused.)

14 REPRESENTATIVE CLEMMONS: Next candidate,  
15 please.

16 Good afternoon, Mr. Frick. It's good to  
17 have you with us today.

18 MR. FRICK: Thank you.

19 REPRESENTATIVE CLEMMONS: Would you please  
20 raise your right hand, and be sworn?

21 WHEREUPON:

22 WILLIAM PATRICK FRICK, being duly sworn and  
23 cautioned to speak the truth, the whole truth and nothing  
24 but the truth, testifies as follows:

25 REPRESENTATIVE CLEMMONS: Mr. Frick, have

1 you had an opportunity to review your personal data  
2 questionnaire?

3 MR. FRICK: Yes.

4 REPRESENTATIVE CLEMMONS: Is it correct?

5 MR. FRICK: It is.

6 REPRESENTATIVE CLEMMONS: Does it need to be  
7 changed in any way?

8 MR. FRICK: No, sir.

9 REPRESENTATIVE CLEMMONS: Would you have any  
10 objection to making that a part of the record in your sworn  
11 testimony today?

12 MR. FRICK: No objection.

13 REPRESENTATIVE CLEMMONS: Thank you. Is  
14 there objection by any Commission member?

15 (No response.)

16 REPRESENTATIVE CLEMMONS: Hearing none, so  
17 ordered.

18 (EXHIBIT NO. 7 - Judicial Merit Selection  
19 Commission Personal Data Questionnaire of William  
20 Patrick Frick dated August 5th, 2015)

21 REPRESENTATIVE CLEMMONS: The Judicial Merit  
22 Selection Commission has thoroughly investigated your  
23 qualifications for the bench. Our inquiry is focused in the  
24 nine evaluative criteria, and has also included a ballot  
25 box survey, a thorough study of your application materials,

1 verification of your compliance with state ethics laws, a  
2 search of newspapers articles in which your name appears, a  
3 study of previous screenings, if any, and a check for  
4 economic conflicts of interest.

5 We've received no affidavits filed in  
6 opposition to your election, and we have no witnesses  
7 present to testify today. Do you have a brief opening  
8 statement you'd like to share with us?

9 MR. FRICK: Just briefly, I'd like to share  
10 why I'm seeking judicial election. As you see in my -- one  
11 of my packets there, I stated that we have a dire situation  
12 in the 6th Judicial Circuit. I certainly understand that  
13 this is an At-Large seat. However, it's taken longer for  
14 people to find their day in court in the 6th Circuit, than  
15 in any other circuit in the state. And this is Chester and  
16 Lancaster. And you can look, the criminal backlog is by  
17 far the worst in the state.

18 Progress has been made, county councils have  
19 allocated funds so there are new attorneys. But we are the  
20 only -- one of the only circuit -- there's two circuits in  
21 the state to have one judge. We need an additional judge;  
22 that would be the extra piece that would help folks find  
23 their day in court. That's litigants who are waiting for  
24 their day in court, that's victims of crime who are  
25 awaiting for closure, and that's defendants who have had

1 cases that have been pending over their head for years.  
2 And that is -- that is the main reason why I am seeking  
3 this office.

4 REPRESENTATIVE CLEMMONS: Thank you very  
5 much, Mr. Frick. As you know, Mr. Bob Maldonado is your  
6 screening attorney. And I would ask that you turn your  
7 attention to him, and respond to any questions he has for  
8 you. Mr. Maldonado?

9 MR. MALDONADO: Thank you, Mr. Chairman.  
10 Mr. Chairman and members of the Commission, I'll start with  
11 a procedural matter. Mr. Frick, you have before you, the  
12 sworn statement you provided detailed answers to over  
13 thirty questions regarding judicial conduct, statutory  
14 qualifications, office administration, and temperament.  
15 Are there any amendments you'd like to make at this time to  
16 your sworn statement?

17 MR. FRICK: No, sir.

18 MR. MALDONADO: At this time, Mr. Chairman,  
19 I'd ask that Mr. Frick's sworn statement -- statement be  
20 entered into the -- as an exhibit in the hearing record.

21 REPRESENTATIVE CLEMMONS: Are there any  
22 objections?

23 (No response.)

24 REPRESENTATIVE CLEMMONS: Hearing none, so  
25 ordered.

1 (EXHIBIT NO. 8 - Judicial Merit Selection  
2 Commission Sworn Statement of William Patrick  
3 Frick dated August 3rd, 2015)

4 MR. MALDONADO: One final procedural matter,  
5 I note for the record that based on the testimony contained  
6 in the candidate's PDQ which has been included in the  
7 record, with the candidate's consent, Mr. Frick meets the  
8 statutory requirements for this position, regarding age,  
9 residence, and years of practice.

10 EXAMINATION BY MR. MALDONADO:

11 **Q. Mr. Frick, you've already explained to the**  
12 **Commission about your -- why you want to be a judge. How**  
13 **do you feel your experience would assist you in being an**  
14 **effective judge?**

15 A. Well, I have 15 years of experience. The vast  
16 majority of that is in the courtrooms, quite frankly, as a  
17 prosecutor for a couple different circuits, Attorney  
18 General's office, and defendant attorney in a couple  
19 different circuits. I am in the courtroom every day. In  
20 fact, if I were not standing here, I would be standing in a  
21 courtroom in Chester, before a judge handling a case. So I  
22 know well what it takes to make a court run. And I have  
23 the experience to ensure that it does so from the judicial  
24 side.

25 **Q. Thank you. Mr. Frick, are there any areas,**

1 including subjective areas of the law, that you would need  
2 to additionally prepare for in order to serve as a judge?

3 **And how would you handle that preparation?**

4 A. Of course, if you look at the questionnaire, the  
5 question that asked is your last five years of experience.  
6 The last five years, all I've done is criminal law. I've  
7 been deputy public defender in the 6th Circuit for -- for  
8 over the last five years. So while that question indicates  
9 that I have absolutely no experience outside the criminal  
10 realm, that is not at all correct. I have been in private  
11 practice.

12 I was in a small firm in Winnsboro, a general  
13 practice firm. And those who have been in a general  
14 practice firm, in a smaller town, understands that you do a  
15 little bit of everything. I did from personal injury to  
16 workers' comp, all manners of -- of civil litigation, as  
17 well as the criminal law. So I would admittedly need to do  
18 a little more studying up on -- on the civil side, but I do  
19 have the experience there.

20 I have attended CLEs to -- to make sure I know  
21 what's going on in those areas, as you see from my  
22 statement, where I -- over the last few years attended  
23 civil law CLEs, just to -- just to keep abreast of what's  
24 going on.

25 **Q. Mr. Frick, can you please explain to the members**

1 **of the Commission what you think is the appropriate**  
2 **demeanor for a judge?**

3 A. A judge needs to have command of the courtroom,  
4 and a judge needs to have respect. The judge cannot be  
5 demeaning. A judge must be -- the judge controls the  
6 courtroom. Obviously, there are many other folks that are  
7 involved with it. But a judge also needs to let the  
8 attorneys do their job. As an advocate, you -- you have to  
9 stand before a judge and ask for things that you might not  
10 deserve, or your client does not deserve. But it is your  
11 duty to do so.

12 A judge must understand that an attorney must do  
13 his job and must listen, very valid points that need to be  
14 taken into consideration. So patience, understanding, and  
15 -- an understanding that the folks before you have --  
16 that's the important case to them. While you may deal with  
17 several cases, that is the most important case in their  
18 life.

19 **Q. Thank you. Mr. Frick, how about the backlog in**  
20 **your circuit, how would you suggest to reduce the backlog**  
21 **in general session and common pleas?**

22 A. Common pleas is not as in bad a shape as general  
23 sessions by far. We're about the middle of the pack in the  
24 6th Circuit. So there's room for improvement, but it is  
25 not the situation that we have with the criminal backlog

1 with some -- almost 60 percent of the entire docket more  
2 than a year old. Your benchmark is to have only 20 percent  
3 of your cases that old. We have three times that in our  
4 circuit. But of course, as we all know, the statutory is  
5 drafted, and there is some question as to where this is  
6 going. But the solicitors still control the docket, for  
7 the most -- all intent and purposes. So the judge cannot  
8 run it by himself, but can be a prod, so to speak, to make  
9 sure the court runs effectively and can -- can look at the  
10 jail -- and looking who -- whose been there for a very long  
11 time, and -- and inquire as to what's going on.

12 I think it's important to have a judge from that  
13 circuit asking those questions. Because it is very easy,  
14 when you're sitting there, and you've got a visiting judge  
15 who's there for a week to duck and cover and wait till  
16 they've kind of moved on. If you've got someone who's  
17 sitting there, that you're going to see rather more  
18 frequently, it's more difficult to do that duck and cover.

19 As I said, we do have the one judge. I know that  
20 you have heard, over the years, the address by the Chief  
21 Justice on the state of the judiciary, and she constantly  
22 points out how the judges in South Carolina have more cases  
23 per capita than any judges in the country. If that is the  
24 case, then the judge for the 6th Judicial Circuit must have  
25 the most cases for any judge in the country, because we

1 have more filings in the 6th Circuit, criminal and civil  
2 combined, than any of the other circuits. That's -- that  
3 makes it tough. That makes it tough. So having an  
4 additional person there, I think would help out in that  
5 situation.

6 Q. Mr. Frick, the Commission received 49 ballot box  
7 surveys regarding you, with six additional comments. The  
8 ballot box surveys, for example, contained the following  
9 positive comments: "Smart and patient, top notch and  
10 skilled, willing to listen to all sides, and can see the  
11 spirit of the law as well as the letter."

12 Two of the written comments expressed concerns.  
13 One comment indicated that you do not have the temperament  
14 to be a circuit court judge. What response would you offer  
15 this concern?

16 A. Well, if you'd been practicing long enough, I  
17 suppose you're not going to make friends with everybody.  
18 It is an adversarial process, and sometimes you just run  
19 into folks that you're not going to get along with. And I  
20 do say that, that is an outlier. I think that most folks  
21 will tell you that I am a zealous advocate for my clients,  
22 and my position.

23 However, I will tell you that, clearly, it's much  
24 different being on this side of the bar versus the judicial  
25 side of the bar. You have to handle things not in an

1 adversarial way, but in a judicial way. And that would be  
2 my response.

3 **Q. Mr. Frick, you've been involved in one lawsuit.**  
4 **The lawsuit was filed in 2012, alleging violations of the**  
5 **plaintiff's civil rights under state and federal law. Can**  
6 **you please explain the nature and the circumstances of this**  
7 **lawsuit?**

8 A. Sure. It is still pending litigation, so I don't  
9 believe I can get into too many details. But I'll give you  
10 a general idea of how we got where we are. I was an  
11 assistant attorney general, prosecuting dog-fighting cases.  
12 This is the case that arose out of Charleston. It was  
13 moved to Greenwood, a change of venue, because of  
14 tremendous amount of press it received in the Charleston  
15 community. We proceeded to trial, and about halfway  
16 through the trial -- in fact, just -- just before the close  
17 of the State's case, the defendant plead guilty to 40  
18 counts of animal fighting and one count of assault and  
19 battery of a high and aggravated nature. There was some  
20 issues with the sentencing sheet, which is what gets into  
21 the litigation.

22 Long story short was, I am named with I think the  
23 entirety of the Department of Probation, Pardon and Parole,  
24 the Department of Corrections, the Attorney General's  
25 office, and the Solicitor's office, all as defendants in

1 this case, alleging that we conspired to keep the defendant  
2 in jail longer than the sentence. That is where the  
3 discussion lies. But I'm afraid I can't -- I would love to  
4 discuss it further, but I don't think I can at this time.

5 It is I believe the 1983 action, and many other  
6 charges were dismissed at summary judgement in federal  
7 court. The remainder of the claims were remanded back to  
8 state court, the plaintiff was given leave to amend their  
9 complaint. It has now been removed back to federal court,  
10 and we are waiting again, I think, additional discovery and  
11 another motion for summary judgement. So it is still  
12 pending in federal court.

13 **Q. Mr. Frick, are you a member of any board or**  
14 **commission that may pose a potential conflict of interest,**  
15 **if elected? And if so, how do you plan to resolve that**  
16 **conflict?**

17 A. Yes. I am a elected member of the Fairfield  
18 County School Board, representing School District 6. And I  
19 will -- although you did not ask this, I am quite proud to  
20 be a member of that school board. Those of you in the  
21 Columbia area may have seen press over the last few years,  
22 very negative press about my school district. And I am not  
23 taking credit for it, but I am proud to be a member of the  
24 board that is somewhat righted the ship. And we're doing  
25 much better there. But I do certainly understand that

1 should I be elected to this, I'd be happy to give up that  
2 role.

3 Q. Thank you, Mr. Frick. I'll finish up with some  
4 housekeeping issues. Have you sought or received a pledge  
5 of any legislator prior to this date?

6 A. No, sir.

7 Q. Have you sought or have you been offered a  
8 conditional pledge of support of any legislators pending  
9 the outcome of your screening?

10 A. No, sir.

11 Q. Have you asked any third parties to contact  
12 members of the General Assembly on your behalf?

13 A. No, sir.

14 Q. Are you aware of anyone attempting to intervene  
15 in any part of the process on your behalf?

16 A. No, sir.

17 Q. Have you contacted any members of the Commission?

18 A. No, sir.

19 Q. Do you understand that you are prohibited from  
20 seeking a pledge or commitment until 48 hours after the  
21 formal release of the Commission's report?

22 A. Yes, sir.

23 Q. Have you reviewed the Commission's guidelines on  
24 pledging?

25 A. I have.

1           **Q. As a follow-up, are you aware of the penalties**  
2 **for violating the pledging rules; that is, it is a**  
3 **misdemeanor, and upon conviction a violator must be fined**  
4 **not more than one thousand dollars or imprisoned not more**  
5 **than 90 days?**

6           A. Yes, sir.

7                       MR. MALDONADO: I would note that the  
8 Piedmont Citizens Committee found Mr. Frick to be qualified  
9 as to the constitutional qualifications of physical health,  
10 mental stability, judicial temperament. He was found well  
11 qualified as to ethical fitness, professional and academic  
12 ability, character, reputation, and experience. The  
13 citizens committee further reported that while Mr. Frick  
14 received high marks and numerous references for his  
15 ability, intellect, and energy. Responders commented that  
16 he is a zealous advocate who vigorously defends the rights  
17 of his clients.

18                       There was some concern, however, that  
19 occasionally, Mr. Frick's zeal turns into a short temper.  
20 He will need to restrain that impulse if he becomes a  
21 circuit court judge. But the Committee did not consider  
22 the tendency to be disqualifying. I would note for the  
23 record, that any concerns raised during the investigation  
24 regarding this candidate, were incorporated in the  
25 questioning of him today.

1           Mr. Chairman, I have no further questions.

2                         REPRESENTATIVE CLEMMONS: Thank you, Mr.  
3 Maldonado. Senator Malloy is recognized.

4                         SENATOR MALLOY: Thank you, Mr. Chairman and  
5 members of the Committee.

6 EXAMINATION BY SENATOR MALLOY:

7           Q. Mr. Frick, I guess you reported to the Committee,  
8 that you and I know each other --

9           A. Yes.

10          Q. -- before coming here, and you practiced law in  
11 my circuit for a few years.

12          A. Yes, sir. That is correct.

13          Q. And you were a young -- a young prosecutor during  
14 the time.

15          A. Yes, sir.

16          Q. And, in fact, I think that you had sought out  
17 counsel whenever you were looking at some various political  
18 offices.

19          A. That is correct.

20          Q. And I just wanted to know that -- I'm not  
21 certain, I didn't check the list before I came, but if you  
22 -- you may have contributed to our campaign at some point  
23 in time during the process. I'm not certain, but --

24          A. It has not been with the last several years.

25          Q. And you were in the International Business

1 **program.**

2 A. I was. Yes, sir.

3 **Q. Do you have a second language?**

4 A. I speak German. Yes, sir.

5 **Q. Okay. And that was in the International Business**  
6 **program?**

7 A. Yes, sir. And I had to spend six months in an  
8 internship, working in Germany, in German.

9 **Q. And so you -- you have some civil practice**  
10 **whenever you were in private practice?**

11 A. Yes, sir.

12 **Q. Okay. And so you are -- but the predominant**  
13 **aspect of your career has been in the criminal practice?**

14 A. That's correct. And on both sides of it.

15 **Q. And in doing that, you know I've been involved**  
16 **with the sentencing reform and alternative sentencing and**  
17 **that kind of stuff. Are you a proponent of the alternative**  
18 **sentencing that we have advanced, and the way we've tried**  
19 **to handle non-violent sentences and --**

20 A. I have watched some progress. I have seen that  
21 we're not incarcerating folks at the rate that we used to.  
22 And we are using the -- the practice methods to get folks  
23 help, who need help and deserve help. So, yes, sir, I  
24 think it's -- it's working well.

25 **Q. And the -- are you also a supporter of the fact**

1     **that we are not using sentencing guidelines, that we have**  
2     **some flexibility that we give to judges in order to**  
3     **accomplish the sentencing aspects that we have?**

4           A.    I think it's important for the judge, because the  
5     judge is the one in the trenches, so to speak, seeing the  
6     case right before them.  So I do think it's important that  
7     we have the flexibility to give the judge, to do the  
8     judge's job, what I think a judge should do, which is to be  
9     able to make that decision also.

10          **Q.    Are you also a proponent of the fact that we**  
11     **don't have the mass appearances in court that we used to**  
12     **end up having, where you have several hundred people show**  
13     **up on Mondays, that kind of thing?**

14          A.    It's getting better.  I wouldn't say we're --  
15     we're where we need to be.  But, yes, sir, it's past those  
16     days when I remember being in the Darlington County  
17     courthouse, and you have 1200 people show up, it would take  
18     three or four hours to get through roll call.  Yes, sir, it  
19     is improving.

20          **Q.    And your practice now -- which office are you**  
21     **with?**

22          A.    I'm with the 6th Circuit Public Defender's  
23     office.  I'm the Deputy Public Defender handling Fairfield  
24     and Chester Counties.

25          **Q.    And you are the circuit -- the defender of the**

1 **system that we are putting together?**

2 A. I think it's brought both -- both sides on better  
3 par. And as you all know, under the previous system you  
4 relied solely -- the Public Defender's office relied solely  
5 on your -- your locality to fund you. And with -- with of  
6 course the per capita funding from the State. But what  
7 this has done is it gives a level of prestige on par with  
8 the solicitor. And folks are starting to understand  
9 better, that there are two sides to the equation. You have  
10 a prosecutor on one side, and for about 80 percent of our  
11 folks who find themselves in the criminal justice system, a  
12 public defender. I think it has improved, yes, sir.

13 Q. And I've asked others on that death penalty  
14 certification. But I think a better question is, is that  
15 because it depends upon which circuit you're in, and the  
16 funding and all that kind of thing, is that you've dealt  
17 with a lot of cases that -- that would have both a penalty  
18 of life, and life in prison.

19 A. Yes, sir.

20 Q. Okay. And have you tried cases to verdict  
21 yourself?

22 A. At least a dozen murder cases. Yes, sir.

23 SENATOR MALLOY: That's all the questions I  
24 have.

25 REPRESENTATIVE CLEMMONS: Thank you, Senator

1 Malloy. Dean Wilcox is recognized.

2 EXAMINATION BY MR. WILCOX:

3 Q. I just have a quick technology question for you.  
4 If you could --

5 A. I'll try.

6 Q. Just that in the position of a circuit judge, you  
7 would face a number of discovery issues, many of which may  
8 deal with electronic discovery aspects. And my question is  
9 simply whether you have had any experience to this point,  
10 in dealing with electronic discovery issues yourself, or  
11 how you might have educated yourself about the issues that  
12 arise in that.

13 A. Well, as we have no technology capabilities in  
14 the Fairfield or Chester County courthouse, we don't deal  
15 with it as much there. Lancaster is a little more  
16 advanced. As you know, we got a brand new courthouse, so  
17 they have used some of the technology in the courtroom, in  
18 -- in presentations to juries.

19 In State? No, not really. We have advantages to  
20 the court where we scan in files and e-mail them to each  
21 other. That is about as advanced as we have got in the  
22 electronic discovery in the criminal area. In Federal? I  
23 have handled some federal cases. So I have dealt with the  
24 e-filing in federal courts, and understood that process,  
25 and dealt with it there. But not really as far as the

1 State's concerned. But we're getting there.

2 REPRESENTATIVE CLEMMONS: Senator Martin is  
3 recognized.

4 SENATOR MARTIN: Mr. Chairman and members of  
5 the Commission, I didn't want to ask a question, but I just  
6 wanted to thank you for your willingness to serve on the  
7 school board. I'm not sure that you might need to have a  
8 mental health test.

9 MR. FRICK: That was the number one question  
10 I got when I said I was going to run.

11 SENATOR MARTIN: Well, let me -- let me just  
12 say that, that is a tremendous service to provide, by  
13 stepping forward and doing that. And that's -- I admire  
14 your willingness to do that. And I just wanted to thank  
15 you for it.

16 MR. FRICK: Thank you. I appreciate it.  
17 And I, quite frankly, have enjoyed it a lot more than I  
18 ever thought I would.

19 REPRESENTATIVE CLEMMONS: How many terms  
20 have you served?

21 MR. FRICK: I'm in my first term, but I'm in  
22 my third year of that first term.

23 REPRESENTATIVE CLEMMONS: My wife served on  
24 the school board for one term, and was so grateful to  
25 retire after that one year.

1 MR. FRICK: I understand.

2 REPRESENTATIVE CLEMMONS: Are there any  
3 other Commission members who might have questions?

4 (No response.)

5 REPRESENTATIVE CLEMMONS: Hearing none, Mr.  
6 Frick, we want to thank you for joining us. And thank you  
7 so much for offering for this position. And your desire to  
8 serve South Carolina is admirable.

9 MR. FRICK: Thank you. Thank you all very  
10 much.

11 REPRESENTATIVE CLEMMONS: That concludes  
12 this portion of our screening process. As you know, Mr.  
13 Frick, the record will remain open until the report is  
14 published. And you may be called back at such time, if the  
15 need should arise. We will remind you of the 48-hour rule,  
16 and ask that you be mindful of it. And should anybody  
17 inquire whether or not they may advocate with the  
18 legislator on your behalf, we would ask you to educate them  
19 on the 48-hour rule.

20 Again, thank you for offering. And we thank  
21 you for your service.

22 MR. FRICK: Thank you again.

23 (Candidate excused.)

24 SENATOR MARTIN: Lunch has arrived. Is  
25 there any objection -- we are scheduled for an hour for

1 lunch. Would there be any objection if we cut that to 30  
2 minutes?

3 MS. BELL: No objection.

4 SENATOR MALLOY: Forty-five minutes.

5 REPRESENTATIVE CLEMMONS: Forty minutes?

6 Senator Malloy requests 40 minutes. So ordered. We got 40  
7 minutes, so we will go back on the record at 1:30. Thank  
8 you.

9 (A recess was held from 12:49 p.m. to 1:37 p.m.)

10 (Representative Clemmons leaves the proceedings.)

11 REPRESENTATIVE CLEMMONS: Stand with your  
12 right hand and be sworn.

13 WHEREUPON:

14 JOCELYN NEWMAN, being duly sworn and  
15 cautioned to speak the truth, the whole truth and nothing  
16 but the truth, testifies as follows:

17 REPRESENTATIVE CLEMMONS: Have you had a  
18 chance to review your personal data questionnaire?

19 MS. NEWMAN: I have.

20 REPRESENTATIVE CLEMMONS: And do you have  
21 any changes to make to that?

22 MS. NEWMAN: I have one change to make to  
23 that. My employment at the time of completing the personal  
24 data questionnaire, I was employed at Richardson, Plowden &  
25 Robinson. Since November 1st of this year, I've worked at

1 the DeQuincy Newman Law Firm as a -- along with my brother,  
2 who is sitting back there. I say that I'm his new  
3 associate; he's my boss. So that would be the one  
4 amendment to that.

5 REPRESENTATIVE CLEMMONS: Thank you. And  
6 that's here in --

7 MS. NEWMAN: Columbia.

8 REPRESENTATIVE CLEMMONS: -- Columbia?

9 MS. NEWMAN: yes, sir.

10 REPRESENTATIVE CLEMMONS: Very good. With  
11 that one verbal amendment, and I believe one previous  
12 written amendment that's been made, does the -- does that  
13 give you your completed and up-to-date personal data  
14 questionnaire?

15 MS. NEWMAN: With the exception of a few  
16 CLEs that I've attended, everything else is correct.

17 REPRESENTATIVE CLEMMONS: Would you have any  
18 objection, Ms. Newman, to -- to submitting your PDQ to --  
19 to be made a part of the -- to be made a part of the record  
20 of your oral testimony today?

21 MS. NEWMAN: No. No objection.

22 REPRESENTATIVE CLEMMONS: Does any member  
23 have an objection?

24 (No response.)

25 REPRESENTATIVE CLEMMONS: Hearing none, so

1 ordered.

2 (EXHIBIT NO. 11 - Judicial Merit Selection  
3 Commission Personal Data Questionnaire of Jocelyn  
4 Newman dated August 17th, 2015)

5 REPRESENTATIVE CLEMMONS: Ms. Newman, the  
6 Judicial Merit Selection Commission has thoroughly reviewed  
7 your qualifications for the bench. Our inquiry is focused  
8 on nine evaluative criteria, and has also included a ballot  
9 box survey, a thorough study of your application materials,  
10 verification of your compliance with state ethics law, a  
11 search of newspaper articles in which your name appears, a  
12 study of previous screenings, and a check for economic  
13 conflicts of interest.

14 We have received no affidavits filed in  
15 opposition to your election, and there are no witnesses  
16 present to testify today.

17 Do you have a brief opening statement you'd  
18 like to share with the Commission?

19 MS. NEWMAN: I do not. I'm just happy to be  
20 here.

21 REPRESENTATIVE CLEMMONS: And we're happy to  
22 have you here. Thank you. Of course, Ms. Dean is your  
23 screening attorney, you met with her on several occasions,  
24 I believe. Would you please direct your attention to her,  
25 and answer any questions she may have.

1 MS. NEWMAN: Okay.

2 REPRESENTATIVE CLEMMONS: Thank you. Ms.  
3 Dean?

4 MS. DEAN: Thank you, Mr. Chairman and  
5 members of the Commission. I have a procedural matter to  
6 take care of, to begin with.

7 Ms. Newman, you have before you the sworn  
8 statement you provided, with detailed answers to over  
9 thirty questions regarding judicial conduct, statutory  
10 qualifications, office administration, and temperament.  
11 Are there any amendments you would like to make to the  
12 sworn statement at this time?

13 MS. NEWMAN: Again, my business address and  
14 telephone number have changed. But that is the only  
15 amendment.

16 MS. DEAN: Thank you. At this time, Mr.  
17 Chairman, I would like to ask that Ms. Newman's sworn  
18 statement be entered as an exhibit into the hearing record.

19 REPRESENTATIVE CLEMMONS: Are there any  
20 objections?

21 (No response.)

22 REPRESENTATIVE CLEMMONS: Hearing none, so  
23 ordered.

24 (EXHIBIT NO. 12 - Judicial Merit Selection  
25 Commission Sworn Statement of Jocelyn Newman

1           dated August 17th, 2015)

2                   MS. DEAN: One final procedural matter, I  
3 note for the record that, based on the testimony contained  
4 in the candidate's PDQ, which has been included in the  
5 record with the candidate's consent, Ms. Newman meets the  
6 statutory requirements for this position regarding age,  
7 residency, and years of practice.

8 EXAMINATION BY MS. DEAN:

9           **Q. Ms. Newman, why do you now want to serve as a**  
10 **circuit court judge? And how do you feel your legal and**  
11 **professional experience thus far will assist you in being**  
12 **an effective judge?**

13           A. Well, I've wanted to be a circuit court judge for  
14 some time, since the beginning of my legal career. I think  
15 it's sort of a natural progression in a person's legal  
16 career -- maybe not for everyone, but it's something that  
17 I've desired to do. And, therefore, I have spent my career  
18 trying to sort of diversify my experience and prepare  
19 myself for service on the bench, representing both  
20 plaintiffs and defendants in criminal and civil law, and  
21 trying a number of cases, as many as I have been able to do  
22 over the years. And I think I'm prepared and ready.

23           **Q. Thank you, Ms. Newman. Are there any areas,**  
24 **including subjective or substantive areas of law, that you**  
25 **would need to additionally prepare for in order to serve as**

1 **a judge? And how would you go about that preparation?**

2 A. I can't think of any specific areas off the top  
3 of my head. I'm certain that I don't know everything, and  
4 there are some study and preparation that will be  
5 necessary. But by, you know, talking to other judges and  
6 studying case law, statutes, event sheets, other things like  
7 that, I will prepare myself.

8 **Q. Thank you. Although you addressed this in your**  
9 **sworn affidavit, could you please explain to the members of**  
10 **the Commission what you think is the appropriate demeanor**  
11 **for a judge?**

12 A. The appropriate demeanor is to be open and -- and  
13 a good listener, respectful to all parties and to give  
14 everyone an opportunity to be heard, and to be fair,  
15 impartial, and weigh all issues before you -- in an  
16 impartial way.

17 **Q. Thank you. What suggestions would you offer for**  
18 **improving the backlog of cases on the docket, both for**  
19 **general sessions and common pleas in the circuit court?**

20 A. I think all that can be improved by just getting  
21 in there and doing the work. I mean, there has to be  
22 cooperation between the judiciary and the clerks of court,  
23 court staff. And just by spending time and -- and making  
24 an effort to dispose of cases, as appropriate. That will  
25 assist in alleviating any backlog.

1 Q. Thank you. Ms. Newman, the Commission received  
2 142 ballot box surveys regarding you, with ten additional  
3 comments. A ballot box survey, for example, conveyed the  
4 following positive comments: "Hardworking, honest,  
5 intelligent, and capable."

6 Would you like to respond to any of those  
7 descriptions?

8 A. No, thank you.

9 Q. Fair enough. The Midlands Citizens Committee  
10 report found you to be qualified in the criteria of  
11 experience -- experience, and the Committee stated, "Ms.  
12 Newman impresses us with her personality and intellect, but  
13 question whether she has the necessary experience at this  
14 point in her career to be as good a judge as she can be in  
15 the future."

16 Also in note in summary, the Committee stated,  
17 "Ms. Newman is smart and has the proper judicial  
18 temperament, but has limited experience."

19 Would you like to respond to these statements?

20 A. Sure. I think that my experience is not so  
21 limited, in fact. As I said, I've made an effort to  
22 diversify my practice throughout the years. I'm not an  
23 attorney that confines myself to my office. I'm a lawyer's  
24 lawyer, I like to think, that tries cases and -- and argues  
25 motions and spends as much time in the courtroom as

1 possible.

2 I started my career as a judicial law clerk. And  
3 in that role, of course, spent a considerable amount of  
4 time in the courtroom as the, you know, sidekick/right arm  
5 to the judge, and learned through that experience. But  
6 also through my work at the Solicitor's office/Richardson  
7 Plowden, doing, as I said, doing both plaintiffs work and  
8 defense work, both criminal and civil. I think that I've  
9 done a good bit to diversify my experience and -- and have  
10 as much experience in a courtroom, as one can.

11 **Q. Thank you. Now I just have some housekeeping**  
12 **issues. Have you sought or received the pledge of any**  
13 **legislator prior to this date?**

14 A. No.

15 **Q. Have you sought or have you been offered a**  
16 **condition pledge of support of any legislator pending the**  
17 **outcome of your screening?**

18 A. No.

19 **Q. Have you asked any third parties to contact**  
20 **members of the General Assembly on your behalf?**

21 A. No.

22 **Q. Are you aware of anyone attempting to intervene**  
23 **in any part of the process on your behalf?**

24 A. No.

25 **Q. Have you contacted any members of this**

1 Commission?

2 A. No.

3 Q. Do you understand that you are prohibited from  
4 seeking a pledge or commitment until 48 hours after the  
5 formal release of the Commission's report?

6 A. I understand.

7 Q. Have you reviewed the Commission's guidelines on  
8 pledging?

9 A. I have.

10 Q. And as a follow-up to that, are you aware of the  
11 penalties for violating the pledge rules; that is, it is a  
12 misdemeanor, and upon conviction the violator must be fined  
13 not more than a thousand dollars or imprisoned not more  
14 than 90 days?

15 A. I understand.

16 MS. DEAN: Thank you. I would note that the  
17 Midlands Citizens Committee found Ms. Newman qualified in  
18 the criteria of constitutional qualifications, physical  
19 health, mental stability, and experience. The Committee  
20 found her well qualified in the criteria of ethical  
21 fitness, professional and academic ability, character,  
22 reputation, and judicial temperament.

23 And we've already addressed the statements  
24 by the citizens committee. I would just note for the  
25 record, that any concerns raised during the investigation

1 regarding this candidate, were incorporated into today's  
2 questioning.

3 Mr. Chairman, I have no further questions.

4 REPRESENTATIVE CLEMMONS: Questions by the  
5 Commission members? Dean Wilcox.

6 EXAMINATION BY MR. WILCOX:

7 Q. Ms. Newman, first of all, thank you for offering  
8 for this position. We appreciate your interest in the  
9 service to the state. I will forgive you for leaving Duke  
10 University early. But that's all right. I'm sure you had  
11 good reasons.

12 My question is a technology question, in many  
13 ways. As a judge in the circuit court, you will  
14 undoubtedly encounter increasing questions and discovery  
15 disputes involving electronic discovery. And there --  
16 there are many issues that are peculiar to electronic  
17 discovery, because of its nature. And what experience do  
18 you have at this point in your career, dealing with  
19 electronic discovery issues? Or to what extent have you  
20 attempted to educate yourself about that field, in case you  
21 do encounter it?

22 A. I don't have any personal experience. My  
23 experience, I guess, wouldn't technically be considered  
24 electronic discovery, but there's certainly some  
25 investigation of clients, potential witnesses that I've

1 done in my practice. I've not argued any motions or  
2 encountered any sort of adversarial proceeding regarding  
3 electronic discovery. But I think that is sort of a hot  
4 topic in the legal arena.

5 And there are certainly lots of articles written  
6 by the AB -- you know, by members on behalf of the ABA.  
7 And, of course, I make every effort to stay abreast of hot  
8 topics in the legal arena, including electronic discovery,  
9 whether it's blogs, or, you know, other websites, magazines  
10 and other things.

11 MR. WILCOX: I have no other questions.  
12 Thank you.

13 REPRESENTATIVE CLEMMONS: Thank you. Any  
14 other questions? Ms. Wall.

15 EXAMINATION BY MS. WALL:

16 Q. Ms. Newman, I want to make sure I've got my dates  
17 right. So we understand you've been in practice eleven  
18 years?

19 A. Yes.

20 Q. And during that time, I note that your overview  
21 says that you've tried numerous cases. Have you ever had  
22 the opportunity to try -- to be first chair in any cases,  
23 either in circuit court -- not magistrates court -- circuit  
24 court or any other -- federal court? I don't know if  
25 you've done any work in federal courts.

1           A.    I've not tried any cases in federal court, but  
2 I've certainly been first chair in a number of cases in  
3 circuit court. I would say only one case as first chair,  
4 but several civil cases.

5           **Q.    Involving what type of matters?**

6           A.    Personal injury, premises liability -- I believe  
7 that's the extent.

8                   MS. WALL: Thank you.

9                   REPRESENTATIVE CLEMMONS: Senator Malloy is  
10 recognized.

11                   SENATOR MALLOY: Good afternoon.

12                   MS. NEWMAN: Good afternoon.

13                   SENATOR MALLOY: I'd like the committee to  
14 reflect that I know Ms. Newman and her family. And,  
15 obviously, have had interaction with other members of her  
16 family, from time to time.

17 EXAMINATION BY SENATOR MALLOY:

18           **Q.    Are you still grading bar exams?**

19           A.    I am.

20           **Q.    Really? How do you like that?**

21           A.    I love it.

22                   MR. WILCOX: Is this an issue of character  
23 we need to take up?

24 BY SENATOR MALLOY:

25           **Q.    And I know that I've been involved with at least**

1 one case that you had over in Darlington, right?

2 A. Yes, sir.

3 Q. And they did real well -- she did real well in  
4 that case.

5 A. Not as well as the opposition.

6 Q. I would just say ones that -- one of the things  
7 that I'm very interested in, and I've asked other folks  
8 here, is the flexibility in sentencing as it relates to  
9 judges. I would -- I'm sure that you're a proponent of  
10 that, as opposed to having guidelines for the judges to end  
11 up using. Is that -- is a fair statement?

12 A. That's a fair statement.

13 Q. And, obviously, I've been supportive of  
14 alternative sentencing for non-violent offenders, and  
15 certainly would like for the judges in our state to  
16 following the sentence reform. You'd be in favor of that  
17 as well?

18 A. Sure.

19 Q. And I think that what we are -- need to address  
20 is, that you were -- you were found qualified by this  
21 committee before.

22 A. Yes, sir.

23 Q. How long ago was that?

24 A. Well, two other times. Most recently would have  
25 been in the fall of last year. And then also in the fall

1 of 2012.

2 Q. Great. And so you were found qualified in both -  
3 - both occasions.

4 A. Yes, sir.

5 Q. And had a chance to appear before the Committee  
6 in the same manner?

7 A. Yes, sir.

8 Q. And you've improved your skills in the time since  
9 that time.

10 A. I believe so.

11 Q. And we've obviously had some discussions during  
12 that time, and you've made improvements in that arena as  
13 well.

14 A. Yes, sir.

15 SENATOR MALLOY: That's all the questions I  
16 have.

17 REPRESENTATIVE CLEMMONS: Thank you,  
18 Senator. Are there any other questions? Ms. Bell.

19 MS. BELL: Thank you. Good morning.

20 MS. NEWMAN: Good afternoon.

21 MS. BELL: Or "good afternoon" at this  
22 point. For completeness of the record, I do want to state  
23 that I do have a personal relationship with Ms. Newman and  
24 her family. Her brother and my husband were law school  
25 roommates, and I've known her for quite some time.

1 EXAMINATION BY MS. BELL:

2 Q. I did want to ask you a question, and also thank  
3 you for your willingness to serve, and continue your  
4 family's longtime history of service for the state.

5 We touched on, a little bit, some of your  
6 experience and how you've grown over the last couple of  
7 years, since the last time you were in front of us. And I  
8 know as a younger lawyer -- I know you've been practicing  
9 for eleven years, but obviously it's not the 20/30 years  
10 that some of the people on this panel have been practicing.  
11 Will you explain, you know, I guess, your involvement and  
12 your caseload when you were at Richardson Plowden, the role  
13 you took in those cases, and if you were the primary  
14 attorney on the majority of your cases or second attorney  
15 or anything like that. Can you explain that for us,  
16 please?

17 A. I'd say in recent years, maybe the past three to  
18 four years, I have been the primary and really only  
19 attorney on most of my cases. A number of those cases in  
20 circuit court, I'd say -- actually, probably a 50/50 split  
21 between state court and federal court. But I've been the  
22 only attorney handling those matters, handling all aspects  
23 of that -- those cases.

24 Except for the billing, there's always someone  
25 else handling that. But client contact and, you know, just

1 all aspect of litigation, whether depositions, discovery,  
2 trials, whatever it needed to be.

3 MS. BELL: Thank you.

4 REPRESENTATIVE CLEMMONS: Thank you, Ms.  
5 Bell. Any other questions?

6 (No response.)

7 REPRESENTATIVE CLEMMONS: Hearing none, Ms.  
8 Newman, thank you so much for being with us today, and for  
9 offering for this position on the bench. You have some  
10 special guests with you, that we did not -- we'd like for  
11 you to recognize today.

12 MS. NEWMAN: I have with me, today, my  
13 mother, Patricia Newman; my father, Clifton Newman; my  
14 brother, Brian Dequincey Newman; and a friend, Renee  
15 Lipson.

16 REPRESENTATIVE CLEMMONS: Thank you. Thank  
17 you for introducing everybody. Thank you for being here.

18 This will conclude this particular portion  
19 of the screening process. As you know, the record will  
20 remain open until the report is published. And you may be  
21 called back at that time, if the need should arise. I'll  
22 remind you of the 48-hour rule, and ask that you be mindful  
23 of it.

24 And should anybody inquire whether they can  
25 advocate on your behalf with members of the General

1 Assembly, we would ask you to instruct them on the 48-hour  
2 rule.

3 Again, thank you for offering. And thank  
4 you for your desire to serve the State of South Carolina.

5 MS. NEWMAN: Thank you.

6 (Candidate excused.)

7 REPRESENTATIVE CLEMMONS: Mr. Patterson,  
8 it's a pleasure to have you with us here. Thank you for  
9 joining us.

10 MR. PATTERSON: Thank you.

11 REPRESENTATIVE CLEMMONS: Would you please  
12 raise your right hand and be sworn.

13 WHEREUPON:

14 GRADY L. PATTERSON, III, being duly sworn  
15 and cautioned to speak the truth, the whole truth and  
16 nothing but the truth, testifies as follows:

17 REPRESENTATIVE CLEMMONS: Have you had an  
18 opportunity to review your personal data questionnaire?

19 MR. PATTERSON: Yes, sir.

20 REPRESENTATIVE CLEMMONS: Is it correct and  
21 complete?

22 MR. PATTERSON: Yes.

23 REPRESENTATIVE CLEMMONS: And in need of no  
24 further augmentation or changes?

25 MR. PATTERSON: No further changes.

1 REPRESENTATIVE CLEMMONS: Do you object to  
2 making this summary and amendments, if any, a part of the  
3 record of your sworn testimony today?

4 MR. PATTERSON: No objection.

5 REPRESENTATIVE CLEMMONS: Are there any  
6 objection by Commission members?

7 (No response.)

8 REPRESENTATIVE CLEMMONS: Hearing none, so  
9 ordered.

10 (EXHIBIT NO. 13 - Judicial Merit Selection  
11 Commission Personal Data Questionnaire of Grady  
12 L. Patterson, III, dated August 17th, 2015)

13 REPRESENTATIVE CLEMMONS: The Judicial Merit  
14 Selection Commission has thoroughly investigated your  
15 qualifications for the bench. Our inquiry is focused on  
16 nine evaluative criteria, and has included a ballot box  
17 survey, a thorough study of your application materials,  
18 verification of your compliance with state ethics laws, a  
19 search of newspaper articles in which your name appears, a  
20 study of previous screenings, and a check for economic  
21 conflicts of interest.

22 We've received no affidavits in opposition  
23 to your election, and there are no witnesses present to  
24 testify today.

25 Do you have a guest with you, today, that

1 you would like to introduce to us?

2 MR. PATTERSON: I do, Mr. Chairman.

3 REPRESENTATIVE CLEMMONS: Please do.

4 MR. PATTERSON: Thank you. My wife Sally is  
5 here with me.

6 REPRESENTATIVE CLEMMONS: Thank you. It's  
7 good to have you with us, Ms. Patterson. Thank you for  
8 joining us.

9 Do you have a brief opening statement you'd  
10 like to share with the Commission?

11 MR. PATTERSON: Just briefly. I appreciate  
12 the opportunity to be here. And I'm looking forward to  
13 answering any questions the Commission members may have.

14 REPRESENTATIVE CLEMMONS: Thank you very  
15 much. Ms. Leslie Simpson is your screening attorney, of  
16 course. We would ask that you direct your attention to  
17 her, and respond to any questions she might have for you.

18 MR. PATTERSON: Yes, sir, Mr. Chairman.

19 REPRESENTATIVE CLEMMONS: Thank you, sir.

20 MS. SIMPSON: Thank you. Mr. Chairman and  
21 members of the Commission, I have a procedural matter to  
22 take care of with this candidate, first.

23 MS. SIMPSON: Mr. Patterson, you have before  
24 you, the sworn statement you provided, with detailed  
25 answers to over thirty questions regarding judicial

1 conduct, statutory qualifications, office administration,  
2 and temperament -- temperament. Are there any amendments  
3 you would like to make at this time to your sworn  
4 statement?

5 MR. PATTERSON: No, ma'am.

6 MS. SIMPSON: Thank you. At this time, Mr.  
7 Chairman, I would like to ask that Mr. Patterson's sworn  
8 statement be entered as an exhibit into the hearing record.

9 REPRESENTATIVE CLEMMONS: Are there any  
10 objections?

11 (No response.)

12 REPRESENTATIVE CLEMMONS: Hearing none, so  
13 ordered.

14 (EXHIBIT NO. 14 - Judicial Merit Selection  
15 Commission Sworn Statement of Grady L. Patterson,  
16 III, dated August 17th, 2015)

17 MS. SIMPSON: One follow-up procedural  
18 matter, I note for the record that, based on the testimony  
19 contained in Mr. Patterson's PDQ, which has been included  
20 in the record, with the candidate's consent, Mr. Patterson  
21 meets the statutory requirements for this position,  
22 regarding age, residence, and years of practice.

23 EXAMINATION BY MS. SIMPSON:

24 **Q. Mr. Patterson, why do you now want to serve as a**  
25 **candidate for circuit court judge? And how do you feel**

1 **your legal and professional experience thus far will assist**  
2 **you to be an effective judge?**

3 A. You know, I want to be a circuit court judge for  
4 a lot of the same reasons I wanted to be a lawyer. There's  
5 an intellectual challenge, problem-solving aspect, and the  
6 opportunity to impact people has benefit for the public.  
7 I've enjoyed practicing law. It's been very rewarding, and  
8 for a whole range of reasons, including self-satisfaction,  
9 accomplishing goals, and helping people. It's really  
10 rewarding, as -- as you really all know, when you're able  
11 to help somebody in a tough situation or a tough spot.  
12 They come to you and don't have the slightest idea of what  
13 to do, and you're able to give them a hand and give them a  
14 good result.

15 If you look at my record, you'll see that I've  
16 been involved in -- well, a number of community activities  
17 from the United Way to the Boy Scouts, and, of course, my  
18 military service. I look at this as an opportunity to use  
19 my experience and training to promote justice, and also  
20 faith and confidence in our judicial system.

21 My experience is spanned -- I've been practicing  
22 for a little over 35 years. And, you know, when you ask me  
23 about experience, I think of it in two ways: One, there's  
24 the experience of knowing how to do things, what I call  
25 practical experience, like go to trial, what the rules of

1 evidence are, what the rules of procedure are, research  
2 skill, writing effectively.

3 But there's also another kind of experience. And  
4 that's one that's a little more subtle. That's experience  
5 that leads to judgment, to the ability to balance competing  
6 interests, to the ability to reach a reasoned decision. I  
7 feel like my experience being broad and long has led me to  
8 have both of those types of assets.

9 Briefly, I started practice out of law school in  
10 the Attorney General's office where -- I'm not being  
11 critical -- but it gave me kind of a free reign to -- to go  
12 and try cases, which was a tremendous asset to me.  
13 Learning early, and doing it, were big parts. I did a lot  
14 of what we call damage cases -- this was before the tort  
15 claims act -- damage cases, motor vehicle tort claims. And  
16 there were caps on those -- very low caps, actually --  
17 which gave me the opportunity to go and try cases.

18 Workers' comp, I had a section of the state, one  
19 of the districts I was assigned to, to handle all state  
20 claim cases in that district, from municipalities and  
21 counties, and anything that might come up at the State.

22 Following the -- my tenure with the Attorney  
23 General's office, I went into private practice, in mostly a  
24 business-type litigation practice, with Quinn, Patterson &  
25 Arndt, which ultimately became the firm of Quinn, Patterson

1 & Willard. And we did covenants not to compete, TROs, and  
2 mostly defense, as I said. There are all types of business  
3 torts, contracts, breach of warranty cases representing car  
4 dealerships -- and that was a tough one, by the way, to try  
5 to defend. But that's an aside.

6 After that, I went to another firm, Quinn,  
7 Patterson & Arndt. Montgomery, Patterson, Potts & Willard,  
8 which is a similar kind of practice, but a lot more  
9 insurance defense. Mostly, for defense -- third-party  
10 insurance coverage defense. But the same general kind of  
11 business-type litigation.

12 In 2008, I formed my own firm, the Patterson Law  
13 Offices. And I do essentially the same kind of work there,  
14 the business-type litigation -- it's a little broader than  
15 that, 'cause I have the freedom to really take what suits  
16 me, if it's something I'm interested in -- but  
17 condemnations and real estate matters as well, litigation -  
18 - not the closing and estate matters, but litigation  
19 involving real estate. And so there a number of things  
20 that I've expanded beyond those original practices.

21 Courts I've been in -- I've handled matters in  
22 magistrates court, municipal court, probate court. Of  
23 course, most of my work's been in the circuit court. I've  
24 argued cases in the Court of Appeals. I've argued cases in  
25 the Supreme Court. On the federal side, I've done matters

1 -- mostly adversary proceedings. District court cases, of  
2 course. I've tried a number of cases here in Columbia.  
3 I've argued in the 4th Circuit.

4 I've been involved in two cases in the United  
5 States Supreme Court. In the original jurisdiction, I was  
6 very much involved in those. I had one -- versus Georgia,  
7 a boundary case. And one was a registration of a state  
8 bond, the -- and then I had one case in the Federal Court  
9 of Claims.

10 So I feel like, lay all that out and look at it,  
11 and the broad experience has -- has given me both the how-  
12 to experience, and that were similar type of experience in  
13 judgement and ability to weigh issues that benefits me and,  
14 I think, would be a benefit and lead to an effective  
15 circuit judge.

16 **Q. Thank you, Mr. Patterson. Are there any areas,**  
17 **including subjective areas of law, that you would need to**  
18 **additionally prepare for in order to serve as a judge? And**  
19 **how would you handle that additional preparation?**

20 A. Most of my practice has been civil. I have done  
21 criminal work -- there's been a DUI recently. But my  
22 practice has basically been civil. So that is something  
23 that I would like to add to. I was in -- a military JAG  
24 officer in the South Carolina Air Guard for 20 -- 22 years.  
25 And in that, of course, I had military justice training,

1 which has been -- that's what the military calls the  
2 criminal area of the law, military justice.

3           And every -- every other year, we do a -- an Air  
4 Force base around the country, and have update training.  
5 So I've tried summary court martial. But again, you're  
6 talking at a lower level. I've done magistrates court  
7 criminal cases. So what I've done is -- of course, if  
8 you'll -- if you -- and you see my record -- attended  
9 criminal CLEs each year. I've also, of course, in advance,  
10 getting ready for the test -- outline all the criminal  
11 matters, and I actually made a little notebook on how the  
12 various -- most recent law on the various issues. And I  
13 have been associated with a former assistant solicitor here  
14 in Richland County, who has associated with me on a number  
15 of cases so that I can learn by doing. And that's been  
16 very effective.

17           I think that, ultimately, however, the guts of  
18 what a judge does, applying the rules of evidence, spotting  
19 issues, the skills in making decisions, skills in applying  
20 rules of law to the facts of a case, those are skills that  
21 are developed over time. Those are skills that come with  
22 your experience. And those are skills I believe that I  
23 have attained and -- equally, in the civil court of common  
24 pleas or in general sessions.

25           **Q. Mr. Patterson, although you addressed this in**

1     **your sworn affidavit, could you please explain to the**  
2     **members of the Commission what you think is the appropriate**  
3     **demeanor of a judge?**

4           A.    I think a judge should be dignified, always  
5    courteous, reserved, but not detached.  A judge is in  
6    control of the courtroom.  He or she sets the tone.  And  
7    that tone can be very important.  You know, people --  
8    citizens of this state, often that's their one exposure to  
9    the courtroom.  During a case, you've got the litigants,  
10   you've got the jury members, you've got the witnesses and -  
11   - you know, the poor witnesses, they get the -- the  
12   roughest part of this whole deal when you have trial,  
13   because they've got -- I know they feel jerked around.

14           But I feel that they should leave that courtroom  
15   with the firm conviction that we've got a solid, fair,  
16   impartial judicial system.  And a judge is the one that  
17   shows them that.  Not without telling them, but by walking  
18   the walk.  And I think the way that his demeanor -- any  
19   judge, his or her demeanor gives that lesson to the  
20   citizens, and a very part -- important part of his role.

21           **Q.    Mr. Patterson, what suggestions would you offer**  
22     **for improving the backlog of cases on the docket, both for**  
23     **general sessions and common pleas?**

24           A.    Common pleas -- a couple of things.  I would  
25    intervene earlier in common pleas cases.  Of course, you

1 know, people often refer to the federal system. The  
2 federal system's has got the luxury of -- they don't have  
3 many big cases and -- it's a whole different way of doing  
4 things. But I think about roster meetings. You know,  
5 roster meetings are always on Monday morning. And you talk  
6 about a mess. It was -- I don't mean it as a mess. It was  
7 just -- they weren't as you thought they would turn out,  
8 let me put it that way. The people were having trouble.  
9 There were all sorts of reasons that a case can't be tried;  
10 they got a new witness, the defendant should have been  
11 served, there's a deposition that hasn't been taken. And  
12 very often there's a motion for summary judgement pending.  
13 At any rate, the roster gets moved around.

14 One suggestion I would have and I would advocate,  
15 is that the roster meeting be moved way back. I mean,  
16 months. And -- and -- and -- and you wouldn't call it a  
17 roster meeting, but you would basically set a week of court  
18 for cases, early. At that point, the litigant -- the  
19 lawyers would say, "I need to do this. I need to do that.  
20 I need a motion heard."

21 And a judge, through a Rule 16 or -- would call a  
22 status conference, would say, "Okay. Here's what we're  
23 going to get done. Here's your period of time." It would  
24 be like a scheduling order, really, is what it would turn  
25 into. And those matters that used to get called up on

1 Monday morning would get called up several months ahead of  
2 time, give them a schedule for those -- those particular  
3 lawyers to meet. And I think that would take care of a lot  
4 of that. By the time you got the week, all those issues  
5 should be gone.

6 Of course, the mediation has been very successful  
7 in this -- in this state. I was one of those who was not -  
8 - I didn't know if it would do much. But it's been very  
9 successful in this state. And I've become a huge advocate  
10 of it. So that is obviously something that helps with the  
11 backlog.

12 On the criminal side, Chief Justice Toal, in her  
13 statement to the Judiciary -- her speech earlier this year,  
14 spoke about three things that have made a difference in the  
15 criminal court, in the -- in the backlog: new judges, which  
16 was several years ago; technology, which is -- of course,  
17 the Chief Justice has been a great advocate of in  
18 collaboration between the judges, defense attorneys,  
19 prosecutor, and clerk of court.

20 Collaboration is a huge area, a great opportunity  
21 for a circuit judge. She is -- matter of fact, last year  
22 when she gave her State of the Judiciary speech, mentioned  
23 several judges by name, and said, "These dockets have  
24 gotten shorter because Judge So-and-so and Judge So-and-so  
25 collaborated and got the dockets moving."

1           So there's a huge opportunity there. And that's  
2 -- that's where I would see my roll.

3           **Q. Thank you. Mr. Patterson, the Commission**  
4 **received 103 ballot box surveys regarding you, with eight**  
5 **additional comments. The ballot box survey, for example,**  
6 **contained the following positive comments: "Would be an**  
7 **excellent addition to the South Carolina Circuit Court**  
8 **bench, very intelligent, possesses excellent temperament,**  
9 **and would be fair to all lawyers and litigants, extremely**  
10 **high degree of intelligence and legal knowledge."**

11           **One of the written comments expressed a concern;**  
12 **it indicated that you may not have the -- have enough**  
13 **experience for the circuit court. What response would you**  
14 **offer to this concern?**

15           **A. Well, as I indicated, when I started practicing**  
16 **in the Attorney General's office, I went to circuit court.**  
17 **You know, I looked last night, just out of interest, to see**  
18 **what -- where I've tried cases around the state. And I --**  
19 **it just -- to verdict. I mean, not just trying and**  
20 **settling them. They went all the way to verdict. And half**  
21 **of the judicial circuits, I've tried a case in and went to**  
22 **verdict, in this state.**

23           **So since the Attorney General's office, most of**  
24 **my work has been in the circuit court. All around the**  
25 **state, actually. Not as much in the Upstate, but around**

1 the state. And -- and so my response to that would be,  
2 that the empirical evidence just doesn't support the  
3 comment. And with due respect to the commenter, I -- I  
4 think he or she just is not adequately familiar with my  
5 record.

6 Q. Thank you, Mr. Patterson. I just have a few  
7 housekeeping issues. Have you sought or received the  
8 pledge of any legislator prior to this date?

9 A. No.

10 Q. Have you sought or have you been offered a  
11 condition of pledge of support of any legislator pending  
12 the outcome of your screening?

13 A. No.

14 Q. Have you asked any third parties to contact  
15 members of the General Assembly on your behalf?

16 A. No, ma'am.

17 Q. Are you aware of anyone attempting to intervene  
18 in any part of the process on your behalf?

19 A. No, ma'am.

20 Q. Have you contacted -- contacted any members of --  
21 other members of the Commission?

22 A. No, ma'am.

23 Q. Do you understand that you are prohibited from  
24 seeking a pledge or a commitment until 48 hours after the  
25 formal release of the Commission's report?

1           A.    I do understand.

2           **Q.    Have you reviewed the Commission's guidelines on**  
3 **pledging?**

4           A.    Yes.

5           **Q.    As a follow-up, are you aware of the penalties**  
6 **for violating the pledging rules; that is, it is a**  
7 **misdemeanor, and upon conviction the violator must be fined**  
8 **not more than one thousand dollars or imprisoned not more**  
9 **than 90 days?**

10          A.    I understand.

11                   MS. SIMPSON:  I would like to note the  
12 Midlands Citizens Committee found Mr. Patterson qualified  
13 as to constitutional qualifications, physical health and  
14 mental stability, and well qualified as to ethical fitness,  
15 professional and academic ability, character, reputation,  
16 experience, and judicial temperament.

17                   In summary, the Committee stated that, "It  
18 is impossible not to be very impressed with Mr. Patterson  
19 in every way.  He could be an excellent addition to the  
20 bench."  The Committee further stated that, "Mr. Patterson  
21 has brought experience, although, his criminal law practice  
22 has been somewhat limited."

23                   I would just note for the record, that any  
24 concerns raised during the investigating -- the  
25 investigation regarding Mr. Patterson, were incorporated in

1 the questioning of the candidate today.

2 Mr. Chairman, I have no further questions.

3 REPRESENTATIVE CLEMMONS: Thank you very  
4 much, Ms. Simpson. Yeah, Senator Malloy, you're  
5 recognized.

6 SENATOR MALLOY: Thank you, Mr. Chairman.

7 EXAMINATION BY SENATOR MALLOY:

8 Q. Mr. Patterson, you were in the National Guard?

9 A. Yes, sir.

10 Q. You achieved the rank of Brigadier General?

11 A. Yes, sir.

12 Q. In your capacity of going through all those years  
13 of service, you had the opportunity to defend many  
14 soldiers.

15 A. I --

16 Q. Before --

17 A. -- I

18 Q. -- boards or whatever.

19 A. Oh, absolutely. Yes, sir.

20 Q. And some of those --

21 A. And many, many --

22 Q. -- involved the board?

23 A. And sometimes that goes to the hearing officer,  
24 himself, yes, sir.

25 Q. And some of those involved criminal matters.

1 A. Yes, sir.

2 Q. And, in fact, in that arena you were -- you were  
3 -- as to what comes before you, as it relates to what the -  
4 - the -- the guardsmen and soldiers bring before you, or  
5 the boards require you, correct?

6 A. Yes, sir.

7 Q. And it would be in a number or variety of topics  
8 that you would have that would come up before the board --

9 A. Yes, sir.

10 Q. -- is that right? And you were honorably  
11 discharged when?

12 A. In 2012.

13 Q. 2012.

14 A. Yes, sir.

15 Q. And your status at that -- at that point in time?

16 A. At that point in time, I was the Assistant  
17 Adjutant General for Air under General Livingston, our  
18 current adjutant general.

19 Q. And as far as this member is concerned, that  
20 makes you qualified in my -- in my opinion. I will further  
21 to saying that you have been before this board before,  
22 correct?

23 A. Yes, sir.

24 Q. Or this commission.

25 A. I have.

1 Q. And you were qualified then?

2 A. I was found qualified, yes.

3 Q. And so during your years of experience -- how  
4 many years have you been practicing law now?

5 A. Thirty-five, -six, -seven. Right at -- right  
6 over thirty-five.

7 Q. Over 35 years?

8 A. Yes, sir.

9 Q. And during that time you've seen the practice of  
10 law change.

11 A. Oh, yes, sir.

12 Q. And you are aware that you are -- you -- you  
13 follow the -- the rules and the statutes and stuff that the  
14 Legislator put before you, correct?

15 A. Oh, absolutely.

16 SENATOR MALLOY: Okay. All right. That's  
17 all the questions I have.

18 REPRESENTATIVE CLEMMONS: Thank you. Dean  
19 Wilcox.

20 MR. WILCOX: First of all, if I may thank  
21 General Patterson for -- for all your many years of service  
22 to the state, and for offering again to serve the state.  
23 Thank you, sir.

24 MR. PATTERSON: Thank you, Dean.

25 MR. WILCOX: And I would also like to

1 commend him on what appears to be excellent taste in  
2 neckties. I think that's a --

3 MR. PATTERSON: Well, I saw you at the CLE  
4 last week and I --

5 MR. WILCOX: There you go.

6 EXAMINATION BY MR. WILCOX:

7 Q. One of the -- as was mentioned a second ago, that  
8 the practice of law has changed a lot since you and I went  
9 to law school sometime. I was just a couple of years  
10 behind you. And one of the areas that's changed is in  
11 technology. And so my question is just that -- to gauge  
12 your experience, particularly with the technology as it's  
13 come to be with regard to electronic discovery in civil  
14 cases. This is certainly one of the issues of today, that  
15 you're likely to encounter as a judge, dealing discovery  
16 disputes. And I didn't know what experience you may have  
17 had dealing with issues of electronic discovery, or,  
18 perhaps, just education that you've gotten for yourself in  
19 that regard. If you could help us.

20 A. Well, I'll tell you, from a litigation --  
21 litigator's standpoint, electronic -- you know, e-mails are  
22 gold. I mean, so what that means is that the person who  
23 has the e-mail is less likely to give it up. And to me  
24 that's the real problem, is how you police the discovery of  
25 electronic records. And which is a very difficult problem,

1 you know. And what you have to do, from what I've seen in  
2 my experience, is you've got to get the original media,  
3 you've got to send an expert in there. I mean, I hate it  
4 because it costs a lot of money. But if you don't send an  
5 expert in who knows what he's looking at, and can tell if  
6 something's been deleted, and, you know, can see if things  
7 have been moved around.

8 I -- it's -- it's -- and y'all -- everybody knows  
9 this, you can have different levels of trust of the other  
10 lawyer, of the -- of the defendant or plaintiff, depending  
11 on which side you're on, the other party. And in some  
12 cases, I don't do any of that. But in some cases, you've  
13 got to get an order that -- that freezes records in their  
14 original format and send somebody to look at them. And  
15 that -- to me that's the biggest problem with it.

16 **Q. Thank you very much. That's all I have.**

17 MR. WILCOX: Mr. Chairman, that's all.

18 REPRESENTATIVE CLEMMONS: Thank you, Dean  
19 Wilcox. Any other questions?

20 (No response.)

21 EXAMINATION BY REPRESENTATIVE CLEMMONS:

22 **Q. General, I'd like to ask, you don't rise to the**  
23 **rank of Brigadier General without knowing the meaning of**  
24 **work. I'd like for you to share with the Commission, how -**  
25 **- give us a glimpse into your work ethic, maybe what your**

1 **typical work week is like, and how you would see yourself**  
2 **in regards to expressing your work ethic on the bench.**

3 A. Well, you're right, I have a job and then another  
4 half a job is -- is time-consuming. There are the  
5 deployments and the schools and -- but I guess you get used  
6 to it, you know, is what it really comes down to. I work -  
7 - my son's wife just had a child last week -- our first  
8 grandchild, as a matter of fact -- and so he's staying  
9 home. It's a different world now. He's staying at home  
10 'cause he's got the -- you know, you get this time off and  
11 all. And I was talking to my wife, and I think I went back  
12 the next day to --

13 MR. WILCOX: The records show the look on  
14 her face?

15 A. But the bottom line is, is I -- I have worked --  
16 I've enjoyed work. As you're working a problem, and you  
17 start seeing a solution or a way to work the problem out,  
18 it -- it -- it adds impetus to keep moving. It makes you  
19 excited. And working has -- I know they call it "work,"  
20 but it's not always really work. It's something you enjoy  
21 doing.

22 In the military career, I was a JAG officer for  
23 22 years, then I moved over to the line. They asked me to  
24 take command over the unit, and I moved over to the line  
25 and was a commander of several units, including the group

1 out at McEntire outside of Columbia, and then became the  
2 Vice Wing Commander, which is the fighting unit, the flying  
3 F16s. And then I moved up to the general spot. A lot of  
4 time, but enjoyable times. And when you work like that, my  
5 experience has been I'm getting more out of what I'm doing  
6 than I'm putting into it. I really enjoy it.

7 Q. As a baby lawyer myself, my first judge I tried a  
8 case before was a certain judge by the name of Ralph King  
9 Anderson. And he -- he held -- he held court over on  
10 Friday night until about nine o'clock at night, and then  
11 would call us back in on Saturday, much to the  
12 consternation of the clerk. And I might be citing an  
13 extreme case, but I -- I look back at that, and I -- I  
14 respect Judge Anderson's work ethic. And to me, he's a  
15 mentor. So I would ask -- I would ask you, in terms of  
16 your work ethic on the bench, would you -- how would you  
17 see yourself carrying out your duties in terms of having  
18 litigants and attorneys busy in your court throughout the  
19 week?

20 A. I would be available. And I think -- I think  
21 that the judge being available to parties that need a  
22 motion heard, for example, is very important. You know, we  
23 have a problem with motions taking a long time, and holding  
24 other things up. Particularly, discovery motions, if  
25 somebody's -- has a discovery motion, the case just goes

1 dead. And the judge being available, I think, is very  
2 important. You know, in Greenville, they've got a clerk up  
3 there who's got a great system; you file a motion, and  
4 written right on there is your hearing date and time. A  
5 tremendous system.

6 But I would be available -- I would be in the  
7 office. I'm in my office all the time, anyway. I'd be in  
8 the office. And, particularly, for times that are --  
9 either the roster falls apart or there's dead time in the  
10 courtroom is when I would start getting on the phone -- in  
11 the office, start getting on the phone and seeing what we  
12 could do to help people move their cases along. So I feel  
13 like I would always be available, best I could, based on  
14 the schedule. And, definitely, I would be in the office.

15 Now, can I tell you a quick story about Ralph  
16 King?

17 **Q. Yes, sir.**

18 A. I got the same thing. He tried two cases at  
19 once. And you'd go on break and he'd call the other one  
20 witness as a rule contest. And he'd call the other  
21 witnesses in, and then they'd go on break and he'd call us  
22 back in. And he would -- he had the work ethic.

23 REPRESENTATIVE CLEMMONS: General Patterson,  
24 thank you so much for being with us today.

25 Last call for any questions.

1 (No response.)

2 REPRESENTATIVE CLEMMONS: Hearing none, we  
3 appreciate your presence. We appreciate your offering for  
4 this important position on the bench in South Carolina. We  
5 appreciate your service in South Carolina for years past,  
6 and your desire to serve in the future.

7 This concludes this portion of the screening  
8 process. As you know, General Patterson, the record will  
9 remain open until the report is published. And you may be  
10 called back at such time, if the need should arise. I'll  
11 remind you of the 48-hour rule, and ask you to be mindful  
12 of it.

13 And should anybody inquire whether they may  
14 advocate on your behalf with members of the General  
15 Assembly, we would ask that you educate them on the 48-hour  
16 rule. Again, thank you for offering. And thank you for  
17 your service to South Carolina.

18 MR. PATTERSON: I thank all of you for the  
19 opportunity. I appreciate it.

20 REPRESENTATIVE CLEMMONS: Thank you,  
21 General.

22 (Candidate excused.)

23 REPRESENTATIVE CLEMMONS: If we could bring  
24 in the last candidate, we'll move right on.

25 Mr. Reibold, it's good to have you with us

1 again. Thank you for --

2 MR. REIBOLD: Thank you very much.

3 REPRESENTATIVE CLEMMONS: Thank you for  
4 offering. Thank you for joining us. Would you please  
5 raise your right hand.

6 WHEREUPON:

7 ROBERT L. REIBOLD, being duly sworn and  
8 cautioned to speak the truth, the whole truth and nothing  
9 but the truth, testifies as follows:

10 REPRESENTATIVE CLEMMONS: Have you had an  
11 opportunity to, Mr. Reibold, to review your personal data  
12 questionnaire?

13 MR. REIBOLD: Yes.

14 REPRESENTATIVE CLEMMONS: Is it complete and  
15 correct?

16 MR. REIBOLD: As far as I can tell, yes, it  
17 is.

18 REPRESENTATIVE CLEMMONS: Okay. So you see  
19 no changes that need to be made at this time.

20 MR. REIBOLD: Correct.

21 REPRESENTATIVE CLEMMONS: Do you object to  
22 our making this summary, and any amendments, if applicable,  
23 a part of your record of your sworn testimony?

24 MR. REIBOLD: No, I don't.

25 REPRESENTATIVE CLEMMONS: Are there any

1 objections?

2 (No response.)

3 REPRESENTATIVE CLEMMONS: Hearing none, so  
4 ordered

5 (EXHIBIT NO. 15 - Judicial Merit Selection  
6 Commission Personal Data Questionnaire of Robert  
7 L. Reibold dated August 4th, 2015)

8 REPRESENTATIVE CLEMMONS: The Judicial Merit  
9 Selection Commission has thoroughly investigated your  
10 qualifications for the bench. Our inquiry is focused on  
11 our guiding nine evaluative criteria, and it has also  
12 included a ballot box survey, a thorough study of your  
13 application materials, verification of your compliance with  
14 state ethics laws, a search of newspaper articles in which  
15 your name appears, a study of previous screenings, and a  
16 check for economic conflicts of interest.

17 We have received no affidavits filed in  
18 opposition to your election, and there are no witnesses  
19 present to testify.

20 Do you have a brief opening statement that  
21 you would like to share with the Commission?

22 MR. REIBOLD: I have a very brief opening  
23 statement.

24 REPRESENTATIVE CLEMMONS: Please go ahead.

25 MR. REIBOLD: And I don't know -- when it

1 starts getting to five o'clock, I'm not sure if I'm  
2 supposed to say "good evening" or "good afternoon." I'm  
3 still about decided I'm going to go with "good afternoon"  
4 for now.

5 I know that you've had screening hearings  
6 for two days now. I know that I'm the last, but I hope not  
7 the least of the people that you'll see today. This can be  
8 a mind-numbness experience, so I'll try to keep the remarks  
9 brief, in the interest of getting everyone out of here and  
10 keeping everybody sane.

11 When I stood before you almost a year ago  
12 today, asking for your recommendation, that was not the  
13 first time I'd been before this commission. And what I  
14 hope my perseverance shows is that my interest in a  
15 judicial position is sincere. It's genuine. This is not a  
16 flavor-of-the-month job for me. This is not a retirement  
17 opportunity for me. This is the destination. I believe in  
18 the job, and I want to do the work. And I hope that at the  
19 end of this hearing, I'll be able to -- to show you that  
20 I'm deserving of your recommendation.

21 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
22 Reibold. Mr. Richard Pearce, of course, is your screening  
23 attorney; you've met with him. We would ask that you  
24 direct your attention to Mr. Pearce, and respond to any  
25 questions he may have. Thank you. Mr. Pearce.

1 MR. PEARCE: Mr. Chairman and members of the  
2 Commission, I have a procedural matter that I need to take  
3 up with Mr. Reibold at this time.

4 You have before you a sworn statement you  
5 provided, with detailed answers to over thirty questions  
6 regarding judicial conduct, statement qualifications,  
7 office administration, and temperament. Are there any  
8 additional -- are there any amendments that you would like  
9 to make at this time to your sworn statement?

10 MR. REIBOLD: I'm sure it's fascinating  
11 reading, but no amendments that I would like to make at  
12 this time.

13 MR. PEARCE: At this time, Mr. Chairman, I  
14 would like to ask that Mr. Reibold's sworn statement be  
15 entered as an exhibit into the hearing record.

16 REPRESENTATIVE CLEMMONS: Thank you, Mr.  
17 Pearce. Is there any objection?

18 (No response.)

19 REPRESENTATIVE CLEMMONS: Hearing none, so  
20 ordered.

21 (EXHIBIT NO. 16 - Judicial Merit Selection  
22 Commission Sworn Statement for Robert L. Reibold  
23 dated August 3rd, 2015)

24 MR. PEARCE: One final procedural matter, I  
25 note for the record that, based on the testimony contained

1 in Mr. Reibold's PDQ, which has been included in the  
2 record, with the candidate's consent, that Mr. Reibold  
3 meets the statutory requirements for this position,  
4 regarding age, residence, and years of practice.

5 EXAMINATION BY MR. PEARCE:

6 **Q. Mr. Reibold, would you please tell the Commission**  
7 **why you want to serve now, as a circuit judge, and how you**  
8 **feel your legal and professional experience thus far will**  
9 **assist you in being an effective judge.**

10 A. I'm happy to do that. Again, when I stood before  
11 you last year at this time, I told you that I'm not naive,  
12 and I am an idealist. I believe in the system. I know it  
13 doesn't work right all the time. And I'm -- I am very  
14 concerned about the perception of the system in society.  
15 We have a large portion of our population who feels that if  
16 they walk into the doors of a criminal court, the deck is  
17 stacked against them. We have a similarly large portion of  
18 people who believe that if they walk into a civil court,  
19 the deck is stacked against them.

20 We have open disputes between our Supreme Court  
21 and the General Assembly. We have people who view the  
22 United States Supreme Court as a political body rather than  
23 a court. And I think that the perception of a system is  
24 important. It has to be fair for everything to work. It  
25 has to be fair for justice. It has to be fair for people

1 to believe in the system. And the only way to do that is  
2 to get in there and do it myself.

3 I'm a big believer in personal responsibility.  
4 The way I feel is, that if you're walking down the street  
5 and you see something, and you say to yourself, "Somebody  
6 ought to do something about that," you're that someone.  
7 And everybody's going to see different things. But if you  
8 see it, it's your responsibility. And what I see is the  
9 court system.

10 And now on a more personal level, I think I  
11 disappointed my father; he wanted me to be an engineer like  
12 he was. But ever since I was a little boy, younger than  
13 ten, I talked about being a lawyer. That's what I wanted  
14 to do. I don't know how it got in my head, but that's what  
15 I wanted to do. And when I went to law school, I thought,  
16 well, I'm going to be one of these transactional guys that  
17 stays up in the, you know, twenty-fifth floor of the tall  
18 building, and makes a lot of money, and that's what I'm  
19 going to do.

20 But after going through law school, and after my  
21 first position out of law school as a judicial clerk, I  
22 took a completely different track. I've stayed in trial  
23 work. I've stayed in the courtroom. And I've stayed in  
24 the civil system ever since then and not looked back.

25 And I don't think I realized until recently -- I

1 worked for Judge Kinard, who recently passed away, and it  
2 gave me the opportunity to reflect on that experience as a  
3 clerk. I don't think I realized until recently, what an  
4 effect that had on me. I got to see what a judge does. I  
5 got to see how a judge interacts with the system. I got to  
6 see the good that a judge can do. And that, I really  
7 believe, has made a lasting impression on me.

8           And I think the simplest way I can put why do I  
9 want to be a judge is to tell you what I told my four-year-  
10 old a few weeks ago. She was -- she saw my studying -- we  
11 have to take a test as part of this proceeding, and she saw  
12 me studying for the test, and asked me what I was doing.  
13 And I said, "I'm studying to be a judge."

14           And she said, "Why do you want to be a judge?"  
15 There it is, there's the question.

16           And I said, "Well, Sadie -- that's her name -- I  
17 said, "I believe in right and wrong, and I believe that  
18 everybody needs to play fair and by the rules. And that's  
19 what a judge does." That's the -- that's the simplest way  
20 I can put that into words for you.

21           Now, why do I believe my experience qualifies me  
22 to be a judge? Well, as I mentioned, I served as a law  
23 clerk. I don't think there's any better training to be a  
24 circuit court judge than to be a law clerk. You're with a  
25 judge on a day-to-day basis; you're involved in the trials;

1 you're involved in the motions' hearings; you get to see  
2 how decisions are made; you get to see how the lawyers  
3 interact with the judge. I can't think of any better  
4 training for a circuit court position than to serve as a  
5 clerk of a circuit court judge.

6 On top of that, I've got down 20 years experience  
7 litigation. Like most young lawyers, I started out with a  
8 simple car wreck, and my first trial was a \$2,000 car wreck  
9 case here in Richland County. Justice Pleicones, who was  
10 then in the Circuit Court bench, tried the case. The jury  
11 came back with less than we'd offered to settle, so I  
12 considered that a victory. But since then I've progressed  
13 cases, and work has gotten increasingly more complex.

14 I started with the auto wreck to a slip-and-fall,  
15 and now to employment discrimination cases. I do products  
16 liability cases. I've done procurement code matters. I've  
17 been involved in an eight-year massive, multi-  
18 plaintiff/multi-defendant class action suit here in Circuit  
19 Court. And I've tried a multi-million-dollar class action  
20 suit here in the Circuit Court. That doesn't happen very  
21 much; most class actions don't make it all the way to  
22 trial.

23 On the appellate front, I have argued the simple  
24 appeal a magistrate court's decision in circuit court.  
25 I've argued in front of the Court of Appeals. I've

1 appeared in front of our state's Supreme Court. I've even  
2 agreed a patent appeal in front of the United States Court  
3 of Appeals for the Federal Circuit. So I've been very  
4 fortunate in my -- in the breadth of my experience, and the  
5 opportunities that I have had to develop my craft.

6 And I really believe that, that experience  
7 qualifies me to be a circuit court judge. I was found well  
8 qualified by the Bar Association in every category. I've  
9 been AB-rated by Martindale-Hubbell. I have served as a  
10 delegate to the South Carolina House of Delegates to the  
11 Bar Association. I serve on the Bar's Practice and  
12 Procedure Committee. I do believe I have the education and  
13 experience to serve as a circuit court judge.

14 **Q. Are there any reasons, including subjective areas**  
15 **of the law, that you would need to additionally prepare for**  
16 **in order to serve as a judge? And how would you handle**  
17 **that additional preparation?**

18 A. Well, I made no secret in my materials, and when  
19 I've appeared in front of this commission in the past, most  
20 of my practice is in civil litigation. So I don't have a  
21 large focus on criminal. That is the area where I would  
22 need to do some extra work. But I will tell you, I do have  
23 some criminal experience.

24 Obviously, when I worked with the judge, I've  
25 been to criminal trials, guilty pleas, expungements. So I

1 do have criminal experience on that -- on that regard.  
2 Post-conviction relief proceedings. So I've done that when  
3 I first started out as a lawyer. I've been involved in  
4 post-conviction relief proceedings as a -- as an attorney  
5 since then. I've handled a smattering of criminal cases.  
6 So I'm not completely devoid of criminal experience.

7           Additionally, though, I do recognize that, that's  
8 an area I need to work on. So I have been actively trying  
9 to pursue that, and better my knowledge. I read criminal  
10 law textbooks as -- I read law -- law articles on criminal  
11 law. And I attend criminal law CLEs. Even though that's  
12 not the core of my practice, I'm doing that in an effort to  
13 get me better -- better educated and better prepared to  
14 serve as a circuit court judge.

15           That being said, I think that my civil experience  
16 is valuable and, to some extent, compensates for my lack of  
17 criminal experience. Here in Richland County in 2014,  
18 there were more terms of civil court than criminal court.  
19 And that doesn't count post-conviction relief proceedings,  
20 which are technically civil. I didn't count them, 'cause  
21 they're quasi. But there's more civil court than criminal  
22 court in the bigger cities.

23           Look at our code, there are 63 titles. Criminal  
24 laws found in 16, 17, and a smattering of 56; the rest are  
25 civil. We have 86 rules for civil procedure, and we have

1 40 rules of criminal procedure. So I think that the civil  
2 experience is valuable in this case.

3 But going back to criminal, what I focus on  
4 mostly are the constitutional issues. I want to be  
5 prepared if I'm fortunate enough to be elected, to handle  
6 those issues immediately. I focused on the Jackson v.  
7 Denno hearings, Fourth Amendment Search and Seizure,  
8 Batson, Confrontation Clause. I want to be sure that I can  
9 uphold the rule of law, if I'm fortunate enough to get on  
10 the bench.

11 **Q. Although, you addressed this in your sworn**  
12 **affidavit, could you please explain to the commission**  
13 **members what you think the appropriate demeanor is for a**  
14 **judge?**

15 A. I've seen a variety of demeanors in the  
16 courtroom. Some of them are very cordial, and some of them  
17 are not. What I believe is, is that -- and this goes back  
18 to what I said in the beginning -- everybody would walk in  
19 that courtroom needs to feel that they were treated fairly  
20 and honorable. What that means is, as a judge I don't  
21 raise my voice. What that means is, as a judge I don't  
22 yell at someone. It has to be calm and courteous and fair.  
23 Everybody needs to be able to say what they need to say, to  
24 feel like they have been a part of the system and gotten  
25 the respect they deserve.

1           **Q.    What suggestions would you offer for improving**  
2 **the backlog of cases on the docket, both for general**  
3 **sessions and common pleas in the circuit court?**

4           A.    I was a finance major in college, and as a part  
5 of that curriculum I had to take several classes in  
6 logistics. And to me this is a -- that's what this question  
7 is about. It's about logistics, you have inputs, how many  
8 cases come into the system. And the second thing is how  
9 efficiently can the system handle those cases.

10           On the criminal side, there's not a whole we can  
11 do about the number of crimes that are committed. But we  
12 do have some avenues to address that issue. And one thing  
13 that we're doing here in South Carolina, and I'm proud of  
14 it, is we're exploring alternate courts. We have drug  
15 courts now. We have homeless courts. And I think all of  
16 these avenues not only will produce better results for  
17 people that are involved in the proceedings, but will take  
18 some of the stress off our general sessions system.

19           Another thing that we can focus on is that our  
20 courts and our jails are dominated by people who are repeat  
21 offenders. If we can reduce the rate of recidivism, then  
22 we can cut down on the load of cases coming into the  
23 system. And based in large part to the legislature, and  
24 some of those members of this commission, South Carolina's  
25 actually at the forefront of those efforts. That's one

1 thing I'm proud of. And I think that we need -- anything  
2 more that we can do, we should do. And that will affect  
3 the number of cases coming into the system, and that will  
4 ease the backlog of the criminal system.

5 On the civil side, again, you've got to look at  
6 the first input -- I know this is a friendly discussion --  
7 you have to look at the first input, which is the number of  
8 cases that come into the system. I often tell guys, one of  
9 the great things about this country is that anyone can sue  
10 anybody. The smallest, poorest person can sue the largest,  
11 richest corporation. But one of the worst things about  
12 this country is that anybody can sue anybody. Whether  
13 there's merit or not, you can pull somebody into court to  
14 make them defend themselves. And so one thing we can look  
15 at -- and I would -- to the legislators here, I would  
16 suggest we need to look again at the Frivolous Proceedings  
17 Act. I know that we've amended it in the recent past, but  
18 in its current position, it's ineffective. It's not a good  
19 deterrent. It's not designed well. It's not applied well.  
20 To the extent that we want that to work, it's not working.

21 Now, once you get into the system, once you talk  
22 about the inefficiencies of the system, there are three  
23 ways to dispose of cases. A judge can do it by granting a  
24 motion to dismiss, or granting a motion for summary  
25 judgement. You can settle a case, or you can try it.

1 Those are your three options. Our rules of conservator are  
2 so strict that it makes it very difficult for circuit court  
3 judges to dismiss a case or grant summary judgement; we've  
4 pretty much taken that luxury of case resolution off the  
5 table. That forces everybody into mediations and  
6 settlements or trials.

7 Our mandatory mediation program has been very  
8 effective. Actually, my -- I would estimate roughly 90  
9 percent of the cases I mediate settled. It's rare that I  
10 walk out of there and we don't have agreements. One flaw  
11 in the mediation program is that it forces everybody to  
12 wait until the end of the case to try to talk settlement.  
13 No one will make an offer early in the case. Like, we used  
14 to -- we used to just pick up the phone and say, "How about  
15 \$10,000?" or "How about \$200,000?" Whatever the value of  
16 the case may be. We don't do that now, because making an  
17 offer jeopardizes our negotiation strategy at mediation.

18 And so it does delay things. But it is  
19 successful in resolving cases. And of course the third  
20 track is trials. And that's where the bottleneck is. One  
21 other point I would make in the civil system is the  
22 discovery process. You have roughly twelve months from the  
23 date a complaint is filed until you're subject to call for  
24 trial. The complaint gets served a few weeks after it's  
25 filed. As a defendant, you get your answer and you have 30

1 days to hand-serve. If you serve discovery, which is just  
2 basic request for information, on the other side of that  
3 time. They've got another 30 days to respond.

4 I will also tell you that in my practice I have,  
5 90 percent of the time I don't get responses. It's not  
6 that I get responses with an objection, I don't get  
7 responses. I write a letter and nothing happens. I file a  
8 motion to compel. Three, four, five, six months, depending  
9 on the county I'm in, that motion comes up for hearing. I  
10 finally get responses the day of or the day before the  
11 hearing. That's how it works. What that means, though, is  
12 I've gone four, five, six, seven -- potentially eight  
13 months.

14 I've got one case that's a year old, right now,  
15 and I don't have discovery responses. I can't prepare my  
16 case. I can't get ready for trial in that one-year period.  
17 And so when the trial judge says, "Mr. Reibold, are you  
18 ready for trial?" I have to say, "No." I have to beg for  
19 more time. That creates a backlog at that point. And we  
20 carry more cases on our -- on our docket than we need to,  
21 because we can't resolve them earlier, we can't move them  
22 along.

23 So I think our discovery rules need to be  
24 enforced. I think that needs to be a focus of improving  
25 efficiency in the civil system.

1           **Q.** Mr. Reibold, the Commission received 61 ballot  
2 box surveys regarding you, with four additional comments.  
3 The ballot box survey, for example, contained the following  
4 comments. You were described as an exceptional lawyer,  
5 that you were fair and impartial and that you were very  
6 well qualified to be a judge.

7           One comment indicated a concern. And, again,  
8 that was about whether you were adequately qualified to  
9 serve as a circuit court judge. Do you have any additional  
10 comments you would like to share with the Committee about  
11 that concern from the circuit?

12           **A.** No. We talked about it at length, already today.  
13 I have 20 years experience in civil litigation. I was  
14 found well qualified by the Bar Association and the  
15 Midlands Advisory Committee. I have a AB Martindale  
16 rating. I have no concerns at all about my qualifications.

17           **MR. PEARCE:** Mr. Chairman and Commission  
18 members, I have several other housekeeping issues.

19           **REPRESENTATIVE CLEMMONS:** Proceed.

20           **MR. PEARCE:** Thank you.

21 **BY MR. PEARCE:**

22           **Q.** Mr. Reibold, have you sought or received the  
23 pledge of any legislator prior to this date?

24           **A.** I have not. I know I'm not supposed to talk to  
25 anybody. I have not.

1 Q. Have you sought or have you been offered any  
2 conditional pledge of support of any legislator pending the  
3 outcome of your screening?

4 A. No, I have not.

5 Q. Have you asked any third parties to contact  
6 members of the General Assembly on your behalf?

7 A. No, I have not.

8 Q. Are you aware of anyone attempting to intervene  
9 in any part of the process on your behalf?

10 A. No, I'm not.

11 Q. Have you contacted any members of the Commission?

12 A. No, I have not.

13 Q. Do you understand that you are prohibited from  
14 seeking a pledge or commitment until 48 hours after the  
15 formal release of this commission's report?

16 A. It's been very -- very, very clear. I understand  
17 that.

18 Q. Have you reviewed the Commission's guidelines on  
19 pledging?

20 A. Yes.

21 Q. As a follow-up, are you aware of the penalties  
22 for violating the pledging rules; that is, it is a  
23 misdemeanor, and upon conviction the violator must be fined  
24 not more than one thousand dollars or imprisoned not more  
25 than 90 days?

1           A.    Yes, I'm aware of those penalties.

2                       MR. PEARCE:  I would note that the Midlands  
3 Citizens Committee found Mr. Reibold qualified as to  
4 constitutional qualifications, physical health and mental  
5 stability, and they found Mr. Reibold well qualified  
6 regarding ethical fitness, professional and academic  
7 ability, character, reputation, experience, and judicial  
8 temperament.

9                       The Citizens Committee also shared the  
10 following additional comments: "Like several of our  
11 candidates for this seat, Mr. Reibold lacks experience in  
12 criminal law, but he is already begun to remedy his  
13 shortcoming by taking seminars on criminal law, and  
14 attending sessions of general sessions court.  His hard  
15 work and dedication impresses us, as do his temperament and  
16 intelligence."

17                      And in their summary statement, they said,  
18 "Mr. Reibold has diligently remedied the one area where he  
19 had some deficiency, and is a strong candidate for this  
20 position."  That's all I have.

21                      SENATOR MARTIN:  Thank you very much.  Any  
22 questions by members of the Commission?  Dean Wilcox.

23                      MR. WILCOX:  Thank you, Mr. Chairman.

24 EXAMINATION BY MR. WILCOX:

25           **Q.  I appreciate your willingness to come before us**

1 again, and to serve in this position, if you get nominated  
2 and elected. I have one question that I don't think will  
3 require a long answer at all, but it's a technology  
4 question, just to see where your knowledge is at this  
5 point.

6 As a circuit judge, you would undoubtedly have a  
7 lot of discovery disputes which increasing are going to  
8 involve electronic discovery issues, and the efficiencies  
9 of -- of conducting electronic discovery. At this point in  
10 your career, do you have experience in dealing with  
11 electronic discovery issues at all? And, perhaps, if not,  
12 have you otherwise attempted to educate yourself as to the  
13 issues surrounding electronic discovery?

14 A. Yes to both. I have experience in dealing with  
15 those. It occurs much more often in my federal court cases  
16 than it does in my South Carolina circuit court cases.  
17 Those that tend to be bigger involve more larger  
18 corporations, companies that have electronic documents. In  
19 a car wreck case there usually aren't any electronic  
20 documents to worry about.

21 But, yes, I have. What we do is, we would  
22 occasionally hire experts to image the harddrives, so you  
23 preserve it and put out a letter -- a preservation letter,  
24 so that everything is preserved. You run searches. You  
25 agree with -- you attempt to agree. Sometimes you can't

1 agree with other lawyers. And I think everyone here knows  
2 that. But you attempt to agree on search terms, and you  
3 search a drive. That -- that's how you do it. You do it -  
4 - it's easier for e-mail. Those searches are pretty  
5 simple. But yes, I have had experience. And it is  
6 becoming more prevalent.

7 MR. WILCOX: That's my only question, Mr.  
8 Chairman.

9 SENATOR MARTIN: Thank you, Dean Wilcox.  
10 Any other questions?

11 (No response.)

12 SENATOR MARTIN: Well, Mr. Reibold, we  
13 appreciate your being here. We thank you for your  
14 cooperation with our staff, and for all that you've done to  
15 help get us this far in the process. And I would only  
16 reiterate what Counsel has said about the 48-hour rule.  
17 And you've indicated a very thorough awareness of that.

18 Most importantly, if someone indicates  
19 they'd like to advocate on your behalf, you need to remind  
20 them of the 48-hour rule as well.

21 Again, we thank you for offering. And I  
22 just wish you the very best.

23 MR. REIBOLD: Thank you. It would probably  
24 be appropriate to say "good evening" now.

25 (Candidate excused.)

1                   SENATOR MALLOY: Mr. Chairman, I would ask  
2 that we take a few-minute break, and after we finish the  
3 break, then we move -- we go into executive session.

4                   SENATOR MARTIN: All right. Without  
5 objection, we will take a break. And then we will come  
6 back in, in executive session, to discuss where to go from  
7 there.

8                   (A recess was taken from 5:22 p.m. till 5:30 p.m.)

9                   REPRESENTATIVE CLEMMONS: Do we have a  
10 motion to go into executive session?

11                   MS. WALL: So moved.

12                   REPRESENTATIVE CLEMMONS: Okay. The veil  
13 will be dropped, please. Close the doors. Any non-  
14 members/non-staff, please exit the room.

15                   (Off-the-record executive session.)

16                   REPRESENTATIVE CLEMMONS: We are back on the  
17 record. We have risen from executive session. During  
18 executive session, no decisions were made, or votes passed  
19 or taken. We discussed legal matters, and qualifications  
20 for the record.

21                   We now will proceed to consider whether or  
22 not the -- Jerome Askins -- Jerome P. Askins, III, Jeffrey  
23 P. Bloom, Joseph M. Epting, Jr., William Patrick Frick,  
24 Jocelyn Newman, Grady L. Patterson, III, Robert -- and  
25 Robert L. Reibold are qualified with having had

1           Is there a motion to consider qualifying the  
2 list of remaining candidates?

3           MR. WILCOX: So moved.

4           REPRESENTATIVE CLEMMONS: Do we have a  
5 second?

6           REPRESENTATIVE BANNISTER: Second.

7           REPRESENTATIVE CLEMMONS: Those in favor,  
8 say "aye."

9           (Commission members audibly say "aye.")

10          REPRESENTATIVE CLEMMONS: Any opposed?

11          (No response.)

12          REPRESENTATIVE CLEMMONS: The ayes have it.  
13 It is unanimous, all the aforementioned candidates have  
14 been found qualified.

15                 We will now proceed to nominate three of the  
16 qualified candidates. All right. We will vote as we did  
17 yesterday. Each member of the commission has three votes.  
18 You can -- you can cast no more than three votes. Any  
19 candidate that receives six votes or more will be found  
20 nominated. More than three receive six votes.

21          MR. WILCOX: It will be the three highest to  
22 be nominated, but you must have at six.

23          MS. DEAN: Correct.

24          REPRESENTATIVE CLEMMONS: Thank you. Well  
25 said, Dean. Thank you so much. All right. We will

1 proceed to vote. So those in favor of finding Jerome P.  
2 Askins, III, nominated, please raise your hand.

3 (The commission members vote.)

4 SENATOR MARTIN: And I'll cast proxy for  
5 Senator Campsen.

6 REPRESENTATIVE CLEMMONS: Jeffrey P. Bloom?

7 (The commission members vote.)

8 SENATOR MARTIN: And I'll cast a proxy for  
9 Senator Campsen.

10 REPRESENTATIVE CLEMMONS: Joseph M. Epting,  
11 Jr.?

12 (The commission members vote.)

13 REPRESENTATIVE CLEMMONS: William Patrick  
14 Frick?

15 (The commission members vote.)

16 (The commission members vote.)

17 REPRESENTATIVE CLEMMONS: Jocelyn Newman?

18 (The commission members vote.)

19 REPRESENTATIVE CLEMMONS: Grady L.

20 Patterson, III?

21 (The commission members vote.)

22 REPRESENTATIVE CLEMMONS: Robert L. Reibold?

23 (The commission members vote.)

24 SENATOR MARTIN: And I'll also cast a vote  
25 for Campsen.

1                   REPRESENTATIVE CLEMMONS: I see eight, I  
2 think. We're required to cast three votes. Okay. We came  
3 up short, votes. We're going to have to re-vote.

4                   MR. WILCOX: Did we get three from Campsen?

5                   REPRESENTATIVE CLEMMONS: We cannot vote  
6 more than three. We cannot cast more than three votes. We  
7 can cast less than three, but not more than three.

8                   So Grady L. Patterson, III, and Robert L.  
9 Reibold have been found nominated. Those that received no  
10 votes will be stricken from voting consideration.

11                  MS. WALL: And who are they?

12                  MR. WILCOX: Epting and Frick.

13                  REPRESENTATIVE CLEMMONS: Leaving Askins,  
14 Bloom, and

15                  MS. DEAN: And Newman.

16                  REPRESENTATIVE CLEMMONS: Askins, Bloom, and  
17 Newman. Now, we each have one vote. And we each, and  
18 proxies, have one vote each. So let's -- those in favor of  
19 Jerome P. Askins, III? Oh, a question? I'm sorry. A  
20 question.

21                  MS. WALL: May I ask one more time for you  
22 to read the names of those from whom we are choosing with  
23 one vote.

24                  REPRESENTATIVE CLEMMONS: There are four on  
25 the list. They are Jerome P. Askins, III, Jeffery P.

1 Bloom, and Jocelyn Newman. Are there any other questions?

2 (No response.)

3 REPRESENTATIVE CLEMMONS: Those in favor of  
4 Jerome P. Askins, III, please raise your hand.

5 MS. DEAN: The proxy, or not?

6 SENATOR MARTIN: And the proxy.

7 (The Commission members vote.)

8 REPRESENTATIVE CLEMMONS: Jeffery P. Bloom?

9 (The Commission members vote.)

10 (The Commission members vote.)

11 REPRESENTATIVE CLEMMONS: Jocelyn Newman?

12 (The Commission members vote.)

13 REPRESENTATIVE CLEMMONS: Jocelyn Newman is  
14 the third nominee. Are there any questions or comments by  
15 Commission members?

16 (No response.)

17 REPRESENTATIVE CLEMMONS: Before we --  
18 before we entertain a motion to recess, some members have  
19 expressed an opinion that there may be times when they want  
20 to get instructions to those that have been qualified --  
21 found qualified, but have not been nominated as to areas  
22 where they may wish to focus, if they should ever want to  
23 offer again for this process. Now would be the time to  
24 instruct the staff as to any such instructions. Does any  
25 member have any input?

1                   REPRESENTATIVE BANNISTER: I would like to.

2                   REPRESENTATIVE CLEMMONS: Representative  
3 Bannister.

4                   REPRESENTATIVE BANNISTER: I think on the  
5 comments regarding --

6                   REPRESENTATIVE CLEMMONS: Please use your  
7 microphone.

8                   REPRESENTATIVE BANNISTER: On the comments  
9 that were made during executive session, related to their  
10 lack of experience in certain practice areas, I would like  
11 the staff, as you've discussed with them their performance  
12 or whether they were qualified or not qualified or  
13 nominated, to explain to them sort of their shortcomings in  
14 terms of experience, and that, that's going to be a  
15 continuing issue from the commission from this point  
16 forward -- that, that's going to be in the record.

17                   On those candidates who had a complete lack  
18 of experience on a certain practice area, then yes, I think  
19 you should -- we should give the candidate the benefit of  
20 all time we've spent analyzing their experience and  
21 qualifications. I would like to -- I'd like -- I'd like  
22 them to know where we found their experience deficient, and  
23 that the discussion was that they should make those areas  
24 better, if they intend to --

25                   REPRESENTATIVE CLEMMONS: If there was any

1 such discussion -- if it arose from executive session, then  
2 that would -- the specific would need to be placed on the  
3 record.

4 REPRESENTATIVE BANNISTER: If there was?

5 MS. DEAN: Are you asking staff to make --

6 REPRESENTATIVE BANNISTER: I'm not asking  
7 for any particular way that the message would be delivered,  
8 as much as I would like staff to figure out a way.

9 MS. DEAN: But are you asking staff to  
10 inform candidates of the general experience -- general  
11 high-level experience that you're looking to see in  
12 candidates?

13 REPRESENTATIVE BANNISTER: Let's sleep on  
14 it. And we'll figure out exactly what we want to do.

15 REPRESENTATIVE CLEMMONS: Very good. With  
16 that suggestion, the Chair would entertain a motion to  
17 recede until -- recede until 9:45 in the morning.

18 (There being nothing further, the proceedings  
19 concluded at 7:33 p.m.)  
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CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 7TH DAY OF DECEMBER 2015.

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PATRICIA G. BACHAND, COURT REPORTER  
MY COMMISSION EXPIRES APRIL 9, 2017